

**POLICE OFFICER'S ASSOCIATION
OF NEBRASKA HANDBOOK**

2013 EDITION

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A contributing member of the law enforcement community since 1953

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INTRODUCTION AND DISCLAIMER:

The POAN Handbook is published as a reference tool only. It is not intended, nor warranted, to be a definitive statement of state or local laws, nor of any law enforcement policy.

Readers are urged to review law enforcement actions with the County Attorney, City Attorney, or agency legal advisor. The Nebraska State Statutes are the definitive source of all state laws.

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Your feedback is welcomed and encouraged. Please send any suggestions, comments, or corrections to P.O.A.N. in writing.

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INFRACTION PENALTY CLASSIFICATIONS: [29-436]		
	Minimum	Maximum
FIRST OFFENSE	None	\$100
SECOND OFFENSE*	\$100	\$300
THIRD OR SUBSEQUENT OFFENSE*	\$200	\$500
<ul style="list-style-type: none"> To qualify as a second or higher offense, the conviction must be for the same infraction within a two-year period. Note that some infractions have specific penalties that exceed the penalties noted above, such as possession of marijuana and many traffic infractions. 		

MISDEMEANOR PENALTY CLASSIFICATIONS: [28-106]		
	Minimum	Maximum
CLASS I	None	1 year imprisonment and/or one thousand dollars fine
CLASS II	None	6 months imprisonment and/or one thousand dollars fine
CLASS III	None	3 months imprisonment and/or five hundred dollars fine
CLASS IIIA	None	7 days imprisonment and/or five hundred dollars fine
CLASS IV	\$100	Five hundred dollars fine (no imprisonment)
CLASS V	None	One hundred dollars fine (no imprisonment)
CLASS W	See DUI Penalties	

FELONY PENALTY CLASSIFICATIONS: [28-105]		
	Minimum	Maximum
CLASS I	Death	
CLASS IA	Life imprisonment	
CLASS IB	20 years imprisonment	Life imprisonment
CLASS IC	5 years imprisonment	50 years imprisonment
CLASS ID	3 years imprisonment	50 years imprisonment
CLASS II	1 year imprisonment	50 years imprisonment
CLASS III	1 year imprisonment	20 years imprisonment and/or 25 thousand dollar fine, or both
CLASS IIIA	None	5 years imprisonment and/or 10 thousand dollar fine, or both
CLASS IV	None	5 years imprisonment and/or 10 thousand dollar fine, or both
*Note that a felony offender who has two prior felonies may qualify as a <i>habitual criminal</i> under [29-2221]. Habitual criminal status is determined by a court at sentencing and may result in longer minimum and maximum penalties.		

TRAFFIC INFRACTION PENALTIES [60-689] (Violations of the Rules of the Road with no specific penalty)	
FIRST OFFENSE	Not more than \$100
SECOND OFFENSE	Not more than \$200 for a second offense within a one-year period
THIRD OFFENSE	Not more than \$300 for a third or subsequent offense within one-year

STATUTES OF LIMITATIONS:

Generally: [29-110]

These general time limitations apply, unless there is a time limit specifically set out in any statute.

- These time limits do not extend to a person fleeing from justice.

OFFENSE	TIME LIMIT
<i>Serious Felonies:</i> Treason, Murder, Arson, Forgery, Sexual assault (1 st or 2 nd degree), Sexual Assault of a Child (1 st , 2 nd , or 3rd degree), and Incest.	No Time Limit
<i>3rd Degree Sexual Assault of a Child under Sixteen:</i> [28-320]	No Time Limit
<i>Most Felonies:</i>	Three Years
<i>Most Misdemeanors:</i>	1. Eighteen Months 2. One Year if the penalty is a fine up to \$100 and/or three months jail.
<i>Some Crimes Against a Child under Sixteen Years of Age:</i> Kidnapping, False Imprisonment, Child Abuse, Pandering, Debauching a Minor, Obscenity, Sexually Explicit Conduct, Child Pornography.	Seven Years to have indictment found or complaint filed and a warrant issued for the offender's arrest.
<i>Securities Act Violations:</i> [8-1117]	5 Years
<i>Drug Dealer Tax:</i> [77-4309].	Six Years
<i>Some Fraud Offenses:</i> Criminal Impersonation, Identity Theft, Fraud.	Five Years

SECTION I

PROCEDURE AND GENERAL INFORMATION

TERMS DEFINED:

Some words appear frequently throughout this handbook, some of which are defined here for easy reference. Note, however, that certain statutes use particular definitions that apply only to that section of the law. An effort is made to note such particularly defined terms.

AIDING AND ABETTING: Means participation in the unlawful act, evidenced by some word, act, or deed. No particular acts are necessary, nor are any physical part in the commission of the unlawful act is taken or an express agreement therefor.

- Mere encouragement or assistance is sufficient;

ARREST Means custody of another person for the purpose of holding or detaining him or her to answer a criminal charge. It is defined as the taking, seizing, or detaining of the person of another. Words alone do not constitute an arrest unless the person being arrested freely submits to the officer's authority;

ATTEMPT: An attempt to commit a crime is an open, outward act done with the intent to commit a crime which act would have resulted in the commission of the crime if not prevented.

- There must be an intent to commit the crime and an actual effort to carry out that intent.
- An attempt to commit a crime must be distinguished from mere preparation to commit a crime.

BODILY INJURY shall mean physical pain, illness, or any impairment of physical condition;

CRIME: A crime is a wrong that the law considers injurious to the public and punishes by fine and/or imprisonment in a criminal proceeding in which the State is considered the complaining party (synonymous with the term *Offense*);

DEADLY PHYSICAL FORCE: Means force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

DEADLY WEAPON: Means any firearm, knife, bludgeon, or other

device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

DEFACE: Means to alter the appearance of something by removing, distorting, adding to, or covering all or part of it;

FELONY: Means any crime which may be punished by death or by maximum imprisonment in the Nebraska Penal and Correctional Complex, for one year or more;

INTENT: Intent is purely a mental process, defined as that state of mind which desires that a certain act be done.

- Where intent is made an element of a crime, the offense is not committed if the mind of the person doing the unlawful act is innocent. Intent is not the same thing as *motive*;

MALICE: State of mind of intentionally doing a wrong act without cause or excuse. A person acts maliciously when he/she acts heartlessly, or in total disregard of any social duty;

MISDEMEANOR: Means a crime punishable by a maximum fine of \$1,000 or by maximum imprisonment of not more than one year;

MOTIVE: Is merely the reason which leads the mind to desire a certain result and is not an element of any crime.

MOTOR VEHICLE: Means every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled and electric personal assistive mobility devices;

OMISSION: Means a failure to perform an act as to which a duty of performance is imposed by law;

PEACE OFFICER: Shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

PECUNIARY BENEFIT: Means benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

PERSON: Means any natural person and where relevant a

corporation or an unincorporated association;

PROBABLE CAUSE: Is the reasonable grounds for action, or the existence of facts and circumstance which would induce a reasonable person to believe that a crime has been committed and that the accused has committed it.

- A mere suspicion or belief is never sufficient.
- The test of probable cause for a warrantless arrest is whether, at the moment of the arrest, the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information that the defendant had committed or was committing an offense;

REASONABLE SUSPICION: Is the minimal level of objective justification for detention, and requires more than merely an inchoate and unparticularized suspicion or "hunch,". Reasonable Suspicion requires less than the level of suspicion required for probable cause;

RECKLESSLY: Means acting with disregard to a substantial and unjustifiable risk that a material element of a crime exists or will result from defendant's conduct. The risk must be of a nature and degree that disregard involves gross deviation from the standard of conduct that a law-abiding person would observe in the situation. The nature and purpose of the actor's conduct and the circumstances known to the actor are factors in determining an act as reckless;

SERIOUS BODILY INJURY: Means bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

TAMPER: Means to interfere with something improperly or to make unwarranted alterations in its condition;

THING OF VALUE: Means real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith;

VOLUNTARY ACT: Means an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a

sufficient period to have been able to terminate it;

WARRANT: A warrant is a written court order permitting an officer to do a certain act, such as make an arrest or search.

- It is issued only upon showing probable cause, by a sworn statement made to the issuing court, setting forth the purpose and reasons for the requested warrant.
- If the warrant involved is a search warrant, it will permit the officer to search a named place or person and must accurately describe the items sought for seizure.
- An arrest warrant directs the officer to arrest a named individual, and must state the offense for which the person is arrested.

LAW ENFORCEMENT OFFICERS:

JURISDICTION & POWERS: [29-215]

1. Definitions for Purposes of this Section:

- **Law enforcement officer** has the same meaning as peace officer, and includes sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests, including conservation officers of the Game and Parks Commission;
- **Primary jurisdiction** means the geographic area within the territorial limits of the state or political subdivision that employs the law enforcement officer.

2. Powers Within the Officer's Primary Jurisdiction:

Within an officer's primary jurisdiction, a law enforcement officer has the power and authority to perform the functions and enforce the laws of the laws of Nebraska and the laws of the political subdivision that employs the law enforcement officer.

3. Powers Beyond The Officer's Primary Jurisdiction:

Any law enforcement officer in Nebraska, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

a. ***Fresh Pursuit of a Felony Offender:*** [29-215]

A law enforcement officer in a fresh attempt to apprehend a person suspected of committing a felony may follow such person into any other jurisdiction in Nebraska and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

b. ***Fresh Pursuit of a Misdemeanor Offender:*** [29-215]

A law enforcement officer in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

c. ***With Probable Cause to Arrest a DUI Offender:*** [29-215]

When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug, refusal of a chemical test, or an .02 violation, a law enforcement officer has the power and authority to:

- (1) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;
- (2) Administer any post-arrest test advisement outside of the law enforcement officer's primary jurisdiction; or
- (3) Perform other procedures or functions outside the officer's primary jurisdiction which are directly and

solely related to enforcing the laws concerning a person that is in the operation or actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any other drug or .02 violation for minors under age 21..

d. ***Response to Officer Needing Assistance:*** [29-215]

Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance.

- A *officer in need of assistance* means:

- (1) An officer whose life is in danger, or
- (2) A law enforcement officer who needs assistance in making an arrest and the suspect:
 - (a) Will not be apprehended unless immediately arrested,
 - (b) May cause injury to himself or herself or others or damage to property unless immediately arrested, or
 - (c) May destroy or conceal evidence of the commission of a crime.

e. ***If Contracted By Primary Jurisdiction:*** [29-215]

Municipalities and/or counties may contract with any other municipality or county for law enforcement services.

f. ***When Executing a Warrant:*** [29-407]

An officer named in a warrant to execute it may do so anywhere in the state by apprehending and conveying such offender before a judge. All sheriffs, coroners, and others when required in their respective counties shall aid and assist in the execution of such warrant.

DEATH DURING APPREHENSION OR WHILE IN CUSTODY:

The County Coroner Must Be Notified: [23-1821]

Every law enforcement officer, hospital, emergency care facility, physician, nurse, or emergency medical technician, shall immediately notify the county coroner in all cases when it appears that an individual has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

- The County Attorney performs the duties of the county coroner, but may delegate duties related to viewing dead bodies and serving papers to the county sheriff, or any other peace officer. [23-1210]
- The coroner or coroner's physician shall determine the cause(s) of death and certify it to the presiding judge of the district court.
- Failure to immediately notify the coroner is a Class IV Misdemeanor.

Grand Jury Called: [29-1401]

The District Court shall call a grand jury any time an individual dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

- Any grand jury called pursuant to this section shall be limited to the review of the incident(s) which caused it to be called.

VEHICULAR PURSUITS:

Although sometimes absolutely necessary, vehicular pursuits greatly increase the possibility of injury including injury or damage to innocent third parties or their property. In response to this very real potential harm the legislature has established requirements for law enforcement agencies to set up guidelines for the pursuit of fleeing motor vehicles.

- It is hoped that these guidelines will govern necessary pursuit and prevent unnecessary chase situations.
- It is the duty of every law enforcement officer to be familiar with agency policy so as to reasonably respond to a possible

- pursuit decision.
- All officers must receive specialized training in pursuit driving from the Nebraska Law Enforcement Training Center or as approved by the Police Standards Advisory Council.

Vehicular Pursuit Defined:

A *vehicular pursuit* means an active attempt by an officer operating a motor vehicle to apprehend an occupant of another motor vehicle,

- a. When the driver of the fleeing vehicle is or should be aware of such attempt,
- b. And is resisting apprehension by (1) Maintaining or increasing his or her speed, OR (2) Ignoring the officer, OR (3) Attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

Elements of a Pursuit Policy: [29-211]

The legislature requires each law enforcement agency to adopt and implement a written policy regarding pursuit of motor vehicles that includes the following elements:

- Standards to describe when a pursuit may be initiated taking into consideration the nature and severity of the offense involved;
- Standards to describe when a pursuit is to be discontinued, giving special attention to the danger presented to the general public and the pursuing officer and the probability of later apprehension of the subject based upon his or her identification;
- Procedures governing the operation of pursuits, including the number and type of vehicles which may be used, the method of operation, and the exercise of supervision during pursuits;
- Procedures governing pursuits which include other law enforcement agencies or which extend into the jurisdiction of other law enforcement agencies;
- A system of mandatory continued planning and training of personnel for the proper handling of pursuits, including annual review of the policy with each sworn officer and dispatcher.

Emergency Vehicle Lights and Right of Way: [60-6,151]

Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals, the driver of any other vehicle shall yield the right-of-way .

- Flashing or rotating lights shall be red or red and white. A blue light may also be displayed with such flashing or rotating red light or red and white light [60-6,231]
- Other drivers shall immediately drive to a position parallel to and as close as possible to the curb of the roadway clear of any intersection, and shall stop and remain until such emergency vehicle passes unless otherwise directed by any peace officer.
- Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.
- The driver of an authorized emergency vehicle always has the duty to drive with due regard for the safety of all persons using the highway, regardless of the right-of-way.

NOTE: Drivers must yield to a stopped emergency vehicle that is using audible or visual signals by moving at least one lane away from it - see [60-6,378].

Liability to Third Parties: [13-911]

In the case of death, injury, or property damage to any innocent third party proximately caused by the action of a law enforcement officer during vehicular pursuit, damages shall be paid to such third party by the political subdivision employing the officer.

- The political subdivision that pays damages is entitled to reimbursement of that amount from the driver of the fleeing vehicle, insurance, and other possible sources.

OFFICER FIREARMS QUALIFICATIONS:

Law enforcement officers must maintain proficiency in firearm operation, and shall qualify at least once every calendar year on a

firearm shooting course approved by the Nebraska Law Enforcement Training Center. – see [81-1412] to [81-1412.02]

- Each law enforcement agency shall submit a register to the training center of officers who passed firearm qualification.
- Each law enforcement agency shall maintain records as to the firearm qualifications of its law enforcement officers.

THE RIGHT TO STOP A PERSON: [29-829]

A peace officer may stop any person in a public place who the officer reasonably suspects of committing, who has committed, or who is about to commit a crime and may demand their name, address and an explanation of his actions.

- Reasonable cause for stopping a person must be founded on articulable facts.
- The detention must be brief, only as long as necessary to confirm or eliminate the reasonable belief.
- When a person is stopped for questioning under this section and the officer reasonably suspects he/she is in danger of life or limb, the suspect may be searched for a dangerous weapon.
- If the officer finds a weapon or any other suspected contraband, the officer may take and keep it until the completion of questioning, at which time he/she shall either return it, if lawfully possessed, or arrest such person.

SEARCH FOR WEAPONS PERMITTED: [29-828]

Where the circumstances reasonably indicate to an officer that a search of an individual for weapons is indicated in order to protect the life of such officer a search for weapons may lawfully be made.

SEARCH WARRANTS: [29-815]

Search warrants must be executed between 7:00 a.m. and 8:00 p.m. unless the warrant specifically authorizes that the public interest requires a "night-time" search

ISSUING A CITATION: [29-424]

When a citation is issued, all required information must be entered on it, including the person's name and address, the offense charged, and the time and place the person cited is to appear in court.

- Unless the person cited requests an earlier date, the appearance shall be at least three days after the issuance of the citation.
- One copy of the citation shall be delivered to the person cited, and such person shall sign a duplicate, giving his/her promise to appear at the time and place stated therein.
- Such person thereupon shall be released from custody.
- As soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney.

*NOTE: A citation issued by an officer shall not contain the cited person's social security number.

Citation in lieu of Custody: [29-422]

It is statutory policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public.

a. **General Preference for Citation Only:**

Any peace officer is authorized to issue a citation in lieu of arrest or continued custody for any offense that is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance.

b. **Exception for Protection/Restraining Order Violations:**

An officer with probable cause to believe a person is in violation of a protection or restraining order shall make an arrest of such person with or without a warrant – see [42-928].

c. **Transporting Cited Person to Medical Facility:**

Although a citation is issued, an officer is authorized to take a cited person to an appropriate medical facility if the

person appears mentally or physically unable to care for him or herself.

Custody in Lieu of Citation: [29-427]

Despite the policy preference for citation versus arrest, a peace officer may take the accused into custody or, already having done so, detain him/her further when grounds for an arrest exist and any of the following are true:

- a. The accused fails to identify themselves satisfactorily, or
- b. The accused refuses to sign the citation (see below for traffic offenses), or
- c. The officer has reasonable grounds to believe that any of the following conditions apply:
 - (1) The accused will refuse to respond to the citation, or
 - (2) Such custody is necessary to protect the accused or others when his continued liberty would constitute a risk of immediate harm, or
 - (3) Such action is necessary in order to carry out legitimate investigative functions, or
 - (4) The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance, or
 - (5) The accused has previously failed to appear in response to a citation.

Failure to Sign a Traffic Citation: [60-684]

Any person who is issued a traffic citation is required to sign it; failure to do so is a separate violation.

- Refusal to sign a traffic citation is a Class III Misdemeanor.

Failure To Pay/Appear: [29-426]

Any person cited who fails to appear or otherwise comply with the command of a citation may be charged with a separate violation, which is a Class III Misdemeanor.

- But, there must have been a charge filed by the prosecutor at

least 24 hours before the time set for the appearance of the person cited for there to be a valid charge of failure to appear.

- If the prosecutor does not file a complaint at least twenty-four hours before the time set for the appearance, that person is released from the obligation to appear as specified.

WIRETAPS AND OTHER LAW ENFORCEMENT

INTERCEPTION TECHNIQUES: [86-292], [86-2101]

A Court order must be obtained before using a wiretap, pen register, trap-and-trace device, and other law enforcement techniques regarding the interception of communications.

- Due to the complex nature of this area, law enforcement officers must contact their county attorney or other legal advisor before engaging in any such investigative techniques.

HEARING-IMPAIRED PERSON IN CUSTODY - RIGHT TO INTERPRETER: [20-150 to 20-159]

Whenever a hearing-impaired person is arrested and taken into custody, there must be a qualified interpreter present for any interrogation, warning, notification of rights, or taking of a statement.

- Such interpreter must be approved by the Commission for the Hearing Impaired.
- A hearing impaired person may waive the presence of an interpreter, but such a waiver must be in writing and be done knowingly, voluntarily and intelligently.
- An arrested person otherwise eligible for release cannot be held in custody solely to await arrival of a qualified interpreter, and such interpreter shall be provided as soon as possible.

VICTIM RIGHTS:

Generally:

The statutory public policy in Nebraska is to improve the attitudes of victims and witnesses toward the criminal justice system and to

provide for faster and more complete recovery by the victim from the effects of the crime.

- Although a “victim” in many cases is defined specifically as one who has suffered the effects of a serious crime (homicide, sexual assault, serious injury), the intent of the legislature is relevant to keep in mind when dealing with a victim of any crime.

Legislative Findings:

When crime strikes, the chief concern of the criminal justice system is apprehending and dealing with the criminal, while the victim's needs are frequently forgotten.

- Victims and witnesses are often unaware of both their rights and obligations, and victims often become isolated and receive little practical advice or necessary care.
- People often do not report crime because they feel disenchanted with the criminal justice system;
- The single most important factor determining whether or not a case will be solved is the information that the victim supplies to the responding police officer.

Specific Rights of Victims:

Victims as defined in section [29-119] have many specified rights, including:

- To examine public record information, collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, and formal criminal charges. Such information shall not include intelligence or investigative information;
- To receive protection from harm and threats arising out of their cooperation with law enforcement and prosecution and to be provided with information as to the level of protection available;
- To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime;

- To have any stolen or other personal property expeditiously returned by law enforcement when no longer needed as evidence;
- To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;
- To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

MISSING PERSON REPORT AND INVESTIGATION:

[29-212] to [29-214]

Missing Person Defined

A missing person is a person who is reported as missing to a law enforcement agency.

Required Notifications:

When a report of a missing person has been received by a law enforcement agency having jurisdiction, the agency shall notify:

- a. On duty personnel of the agency as soon as practicable;
- b. All law enforcement agencies considered to be involved;
- c. All law enforcement agencies to which the person filing the report requests that the information be sent; and
- d. All law enforcement agencies requesting the information.

Missing Persons Under 18:

If the missing person is an un-emancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse established within the Nebraska State Patrol.

- Agency rules cannot prevent an immediate investigation by specifying a time limitation for a missing person investigation.

The Missing Persons Information Clearinghouse

The Nebraska State Patrol administers a clearinghouse that is the central repository for information on missing persons.

- The Clearinghouse shall be used by all law enforcement agencies in NE as a central repository for information on missing persons.
- Such information shall be provided on a uniform form prescribed by the Nebraska State Patrol.
- The clearinghouse does not relieve the law enforcement agency having jurisdiction of its investigatory duties and does not automatically involve the Nebraska State Patrol as the primary investigatory agency in such case.
- The Clearinghouse provides several functions, including training to local law enforcement, and coordination with other states and the National Crime Information Center in the exchange of information on missing persons.

JUVENILES IN CUSTODY:

Generally: [29-401]

Any law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation of state law or a local ordinance shall proceed as set forth in the juvenile code.

- In determining the appropriate temporary placement of a juvenile, an officer shall select the placement which is *least restrictive* of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Warrantless Temporary Custody of a Juvenile: [43-248]

A peace officer may take a juvenile into temporary custody without a warrant or order of the court under any of the following circumstances:

- (1) An officer has reasonable grounds to believe the juvenile committed a violation of a state law or municipal ordinance; or
- (2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection; or
- (3) The officer believes the juvenile to be mentally ill and dangerous as defined in section [71-908] and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court; or
- (4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian; or
- (5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and will attempt to leave the jurisdiction or place lives or property in danger;
- (6) The officer has reasonable grounds to believe the juvenile is truant from school;
- (7) The Officer has reasonable grounds to believe the juvenile is immune from prosecution from prostitution under [28-801(5)].

Seriously Endangered Juveniles: [43-250(2)]

A juvenile taken into custody under [43-249(2)] shall be delivered to DHHS for temporary placement as determined by the Department.

- The officer must make a full report to the County Attorney within 24 hours.

Mentally Ill and Dangerous Juveniles: [43-250(3)]

An officer who takes temporary custody of a juvenile who is mentally ill and dangerous under [43-248(3)] may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human

Services.

- The officer shall execute a written certificate as prescribed by DHHS that summarizes the subject's behavior supporting the officer's belief that he/she is mentally ill and dangerous, and that the harm described in section [71-908] is likely to occur before proceedings before a juvenile court may be invoked.
- A copy of the certificate shall be sent to the county attorney.
- The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.
- An officer may not use a jail or detention facility designed for juveniles who are accused of criminal offenses as a temporary placement for a juvenile taken into custody for allegedly being mentally ill and dangerous.

Truant Juveniles: [43-250(4)]

When an officer has reasonable grounds to believe a juvenile is truant from school, the juvenile may be taken into temporary custody without a warrant.

- The officer shall deliver the juvenile to his/her enrolled school.

Prostitution Cases: [43-250(2)], [28-801]

****2013 Update***

A juvenile detained for suspicion of prostitution under [28-801] is subject to temporary custody, and the detaining officer shall immediately report the allegation to DHHS for investigation.

- The Officer shall deliver the juvenile to DHHS for temporary placement as determined by the Department.
- The officer must make a full report to the County Attorney within 24 hours.
- The Juvenile is immune from prosecution from prostitution.

Parental Notice Required: [43-250(1)]

An officer who takes a juvenile into temporary custody shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative.

Juvenile Right To An Attorney: [43-248.01]

All law enforcement personnel or other governmental officials having custody of a juvenile who has been arrested, restrained, detained, or deprived of his or her liberty for whatever reason shall permit the juvenile to call or consult an attorney without unnecessary delay after arrival at a police station or detention facility.

- Such attorney shall be permitted to see and consult with the juvenile in custody alone and in private at the place of custody.

Fingerprints of Juveniles Under 14: [43-252]

The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken without consent of a court.

- If a judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.
- Fingerprints of any juvenile shall not be sent to a state or federal depository unless one of the following is true:
 - (1) The juvenile has been convicted of a felony;
 - (2) The juvenile has unlawfully terminated his/her commitment to a youth rehabilitation and treatment center; or
 - (3) The juvenile is a runaway and a fingerprint check is needed to identify and return the juvenile to his/her parent.

Gang Affiliation of a Juvenile: [43-247(13)]

Officers must be sure to note any facts to determine whether the juvenile is a criminal street gang member. Prosecutors shall consider such affiliation when determining whether to file charges in adult court or juvenile court, or to offer pretrial diversion or mediation.

- **Criminal street gang** means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

- ***Criminal street gang member*** is one who willingly or voluntarily becomes and remains a member of a criminal street gang

Juveniles Arrested For A Warrant: [43-250(5)]

A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer for a decision on further detention.

- If detention is not required, the juvenile may be released without bond if release is in the best interests of the juvenile, the safety of the community is not at risk, and the court is notified that the juvenile had been taken into custody and was released.

Releasing a Juvenile: [43-250(1)(b)]

An officer may immediately release a juvenile taken into temporary custody for a law violation or for being a runaway upon the execution of a promise to appear:

1. Promises To Appear Requirements:

A valid promise to appear requires a juvenile to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in a written notice.

2. Written Notice Requirements:

The notice shall also contain a concise statement of the reasons such juvenile was taken into custody:

- Notice shall be prepared in triplicate;
- The officer shall deliver one copy of the notice to the juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, to sign a written promise to appear at the time and place designated in the notice;
- As soon as practicable, the officer shall file one copy of the notice with the county or city attorney and, when required

- by the court, also file a copy of the notice with the court or appointed officer.

Retaining Custody of a Juvenile: [43-250(1)(c)]

An officer may retain temporary custody of a juvenile taken into temporary custody for a law violation, for being a runaway, or for a probation violation.

- An officer may deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer;
- The peace officer shall implement the probation officer's decision to release or to detain and place the juvenile, based on the probation officer's determination of the need for detention using a detention-screening instrument;
- A detained juvenile shall not be detained in any secure detention facility for longer than twenty-four hours, excluding non-judicial

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days, unless such juvenile has appeared personally before a court for a hearing to determine if continued detention is necessary;

- When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility unless one of the exceptions below applies.

When A Juvenile May Be Placed in an Adult Jail: [43-250(1)(c)]

When a juvenile is taken into temporary custody for a law violation other than a status offense or for being seriously endangered, the following restrictions apply to secure detention, if determined necessary:

- Generally, detention shall occur within a juvenile detention facility;
- Within a metropolitan area where no juvenile detention facility is reasonably available, a juvenile may be placed in an adult jail solely for the purposes of identification, ascertaining his/her health and well-being, and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party. Such placement may not exceed six hours, excluding non-judicial days;
- Outside of a metropolitan area and where no juvenile detention facility is reasonably available, the juvenile may be held in an adult jail not to exceed twenty-four hours excluding non-judicial days while awaiting an initial court appearance, solely for the purposes of identifying the juvenile and ascertaining his/her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
- If a felony charge is filed against the juvenile as an adult, he/she may be securely held in a jail or other facility used for the detention of adults beyond the specified time limits noted above;
- A juvenile who has committed any felony or has committed a misdemeanor or infraction that is not a traffic or status offense,

- may be held in a secure area of a jail or other facility used for the detention of adults for up to six hours before and six hours after any court appearance;
- A status offender or non-offender taken into temporary custody shall not be held in adult jail.

Restrictions on Holding a Juvenile in an Adult Jail:

Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, the following restrictions apply:

- There shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult;
- There shall be adequate staff to supervise and monitor the juvenile's activities at all times.

*NOTE: This section does not apply to a juvenile charged with a felony as an adult if he or she is sixteen years of age or older.

Juveniles Under Sixteen in Adult Jail:

A juvenile who is under sixteen years of age shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults if the following criteria of [43-247(3)] apply:

- a. The juvenile is homeless or destitute, or
- b. The juvenile is without proper support through no fault of his or her parent, guardian, or custodian; or
- c. The juvenile is abandoned by a parent, guardian, or custodian; or
- d. The juvenile lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; or
- e. The parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of the juvenile; or
- f. The juvenile's parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or

- g. The juvenile is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile; or
- h. The juvenile, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school; or
- i. The juvenile is mentally ill and dangerous as defined in section [71-908].

THE SEX OFFENDER REGISTRATION ACT:

[29-4001 to 4014]

Generally:

State policy is to assist efforts of local law enforcement agencies to protect their communities, conduct investigations, and quickly apprehend sex offenders by requiring convicted sex offenders to register with local law enforcement agencies as provided by the Sex Offender Registration Act

- Any person subject to the Sex Offender Registration Act shall register within three working days of becoming subject to the Act, and report a change of residence, work, school, or other information within three days.
- Felony sex offenders are also subject to having their DNA entered into the State DNA Bank, administered by the NSP.

*NOTE: This summary is for general reference only. Any detailed questions on this subject should be directed to an officer's legal advisor.

Definitions: [29-4001.01]

- ***Aggravated Offense*** means any registrable offense under section [29-4003] which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact

with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct;

- ***Blog*** means a web site contained on the Internet that is created, maintained, and updated in a log, journal, diary, or newsletter format by an individual, group of individuals, or corporate entity for the purpose of conveying information or opinions to Internet users who visit their web site;
- ***Chat Room*** means a web site or server space on the Internet or communication network primarily designated for the virtually instantaneous exchange of text or voice transmissions or computer file attachments amongst two or more computers or electronic communication device users;
- ***Chat Room Identifiers*** means the username, password, symbol, image, or series of symbols, letters, numbers, or text characters used by a chat room participant to identify himself or herself in a chat room or to identify the source of any content transmitted from a computer or electronic communication device to the web site or server space upon which the chat room is dedicated;
- ***DNA Sample*** means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;
- ***Domain Name*** means a series of text-based symbols, letters, numbers, or text characters used to provide recognizable names to numerically addressed Internet resources that are registered by the Internet Corporation for Assigned Names and Numbers;
- ***Email*** means the exchange of electronic text messages and computer file attachments between computers or other electronic communication devices over a communications network, such as a local area computer network or the Internet;
- ***Email Address*** means the string of letters, numbers, and symbols used to specify the source or destination of an email

message that is transmitted over a communication network;

- **Habitual Living Location** means any place that an offender may stay for a period of more than three days even though the sex offender maintains a separate permanent address or temporary domicile;
- **Instant Messaging** means a direct, dedicated, and private communication service, accessed with a computer or electronic communication device, that enables a user of the service to send and receive virtually instantaneous text transmissions or computer file attachments to other selected users of the service through the Internet or a computer communications network;
- **Instant Messaging Identifiers** means the username, password, symbol, image, or series of symbols, letters, numbers, images, or text characters used by an instant messaging user to identify their presence to other instant messaging users or the source of any content sent from their computer or electronic communication device to another instant messaging user; **Minor** means a person under eighteen years of age;
- **Minor** means a person under eighteen years of age;
- **Social Networking Web Site** means a web page or collection of web sites contained on the Internet (a) that enables users or subscribers to create, display, and maintain a profile or Internet domain containing biographical data, personal information, photos, or other types of media, (b) that can be searched, viewed, or accessed by other users or visitors to the web site, with or without the creator's permission, consent, invitation, or authorization, and (c) that may permit some form of communication, such as direct comment on the profile page, instant messaging, or email, between the creator of the profile and users who have viewed or accessed the creator's profile;
- **State DNA Data Base** means the data base established pursuant to section [29-4104];
- **Temporary Domicile** means any place at which the person actually lives or stays for a period of at least three working days.

Investigation and Enforcement of the Act:

Any law enforcement agency with jurisdiction in the area in which a person required to register resides, has a temporary domicile, maintains a habitual living location, is employed, carries on a vocation, or attends school shall investigate and enforce violations of the act.

- If an offender violates the registry requirements and cannot be located, the registry information shall reflect that the person has absconded, a warrant shall be sought for the person's arrest, and the United States Marshals Service shall be notified.
- Law enforcement officials, their employees, and state officials are immune from liability for good faith conduct under the Sex Offender Registration Act [29-4012].

Offenders Who Must Register: [29-4003]

The Sex Offender Registration Act shall apply to any person who on or after January 1, 1997, has ever pled guilty or nolo contendere (*no contest*) to, or has been found guilty of any of the following offenses:

- *Kidnapping Of A Minor* [28-313], except when the person is the parent of the minor and was not convicted of any other offense in this section;
- *False Imprisonment Of A Minor* [28-314] or [28-315];
- *Sexual Assault* [28-319] or [28-320];
- *Sexual Assault Of A Child Second Or Third Degree* [28-320.01];
- *Sexual Assault Of A Child First Degree* [28- 319.01];
- *Sexual Abuse Of A Vulnerable Adult* [28-386];
- *Incest Of A Minor* [28-703];
- *Pandering Of A Minor* [28-802];
- *Visual Depiction Of Sexually Explicit Conduct Of A Child* [28-1463.03] or [28-1463.05];
- *Knowingly Possessing Any Visual Depiction Of Sexually*

Explicit Conduct which has a child as one of its participants or portrayed observers [28-813.01];

- *Criminal Child Enticement* [28-311];
- *Child Enticement By Means Of A Computer* [28-320.02];
- *Debauching A Minor* [28-805];

*NOTE: An offender must also register if he/she has been found guilty of Attempt, Solicitation, Aiding or Abetting, Being an Accessory, or Conspiracy to commit an offense listed above.

Additional Registrable Offenses:

In addition to the registrable offenses listed above, the Sex Offender Registration Act applies to any person who on or after January 1, 2010 has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

- (1) Murder in the first degree [28-303];
- (2) Murder in the second degree [28-304];
- (3) Manslaughter [28-305];
- (4) Assault in the first degree [28-308];
- (5) Assault in the second degree [28-309];
- (6) Assault in the third degree [28-310];
- (7) Stalking [28-311.03];
- (8) Unlawful Intrusion [28-311.08(4)];
- (9) Kidnapping pursuant to section [28-313];
- (10) False imprisonment [28-314] or [28-315];
- (11) Sexual abuse of an inmate or parolee 1st degree [28-322.02];
- (12) Sexual abuse of an inmate or parolee 2nd degree [28-322.03];
- (13) Sexual abuse of a protected individual [28-322.04];
- (14) Incest [28-703];
- (15) Child abuse [28-707(1)(d) or (e)];
- (16) Enticement by electronic communication device [28-833].

*NOTE: An offender also must register if that person has pled guilty or nolo contendere to or been found guilty of Attempt,

Solicitation, Aiding or Abetting, Being an Accessory, or Conspiracy to commit an offense listed (1) through (16) above.

*NOTE: In order for the Sex Offender Registration Act to apply to the offenses listed in (1) through (7), (9), and (10) above, a court shall have found that the record shows evidence of sexual penetration or sexual contact, including consideration of the factual basis for a plea-based conviction and information contained in the presentence report.

Other Registration Considerations:

- An offender who enters Nebraska must register for any offense that is substantially equivalent to a registrable offense in another jurisdiction;
- An offender must register if incarcerated or on probation or parole for a registrable offense prior to January 1, 1997;
- An offender who enters Nebraska must register if required to register as a sex offender in another U.S. jurisdiction;
- A person appealing a conviction of a registrable offense must still register during the appeals process.

Duration of Registration: [29-4005]

- a. A sex offender must register during any period of supervised release, probation, or parole and afterwards shall continue to comply with the Act for the full registration period unless granted a reduction. An offender is not subject to verification procedures during any time they are in custody or under an inpatient civil commitment.
- b. A sex offender shall keep the registration current for the full registration period unless granted a reduction:
 - Fifteen years, if the sex offender was convicted of a registrable offense under section [29-4003] not punishable by imprisonment for more than one year. After ten years,

the offender may make a request to the Nebraska State Patrol for a reduction in the registration period to ten years;

- Twenty-five years, if the sex offender was convicted of a registrable offense under section [29-4003] punishable by imprisonment for more than one year; or
- Life, if the sex offender was convicted of a registrable offense under section [29-4003] punishable by imprisonment for more than one year and was convicted of an aggravated offense or had a prior sex offense conviction or is a lifetime registrant in another jurisdiction.

Changes in Registrants Information:

A registered offender must notify the sheriff if he or she has a new address, temporary domicile, habitual living location, new employment, new vocation, attends school, or is incarcerated for more than three days, or no longer has a residence, temporary domicile, or habitual living location.

- Notice must be in writing and must be given within three days of a change
- The sheriff shall submit such information to the Nebraska State Patrol on the date it is received.

Registration Verification: [29-4006]

A registered sex offender who is not incarcerated must appear in person to the office of the sheriff of the county in which he or she resides for verification purposes at specific intervals, depending on the duration of the offender's registration period. Verification information is to be sent by the sheriff to the Nebraska State Patrol on the day it is received and in a manner prescribed by NSP for such purpose. Failure to report for verification is a violation of the Act.

- a. A person required to register under the act for *fifteen years* shall report every twelve months in the month of his or her birth;
- b. A person required to register under the act for *twenty-five years* shall report every six months. The offender shall report, in

- person, in the month of his or her birth and in the sixth month following the month of his or her birth.
- c. A person required to register under the act *for life* shall report, in person, every three months in the month of his or her birth and every three months following the month of his or her birth.

False or Misleading Information: [29-4008]

It is unlawful for any person that is subject to the Sex Offender Registration Act to:

- a. Knowingly and willfully,
- b. Furnish any false or misleading information in the registration.

Failure to Update Information: [29-4008]

It is unlawful for any person that is subject to the Sex Offender Registration Act to:

- a. Knowingly and willfully,
- b. Fail to provide or timely update law enforcement of any of the information required to be provided by the act.

Release of Registrant Information: [29-4009]

Information obtained under the Sex Offender Registration Act shall NOT be confidential, but many things may not be disclosed to the general public.

- a. The authorized release of information shall conform with the rules and regulations of the Nebraska State Patrol.
- b. Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.
- c. The following information may only be disclosed to law enforcement agencies, including federal or state probation or parole agencies, if appropriate.
 - A sex offender's social security number;
 - Any references to arrests of a sex offender that did not result in conviction;

- A sex offender's travel or immigration document information;
- A sex offender's remote communication device identifiers and addresses;
- A sex offender's email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers;
- A sex offender's telephone numbers;
- A sex offender's motor vehicle operator's license information or state identification card number;
- The name of any employer of a sex offender;
- The identity of any victim of a sex offense.

Notification of Sex Offenders: [29-4013]

The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section [29-4009].

- a. The Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender registration and community notification, and shall not be charged for access to documents under this subsection.
- b. The procedures for release of information shall provide for law enforcement and public notification using electronic systems.
- c. Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.
- d. The following shall have access to public notification information:
 - Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993, 42 U.S.C. 5119a;
 - any social service entity responsible for protecting minors in the child welfare system;

- any volunteer organization in which contact with minors or other vulnerable individuals might occur;
- any public housing agency in each area in which a registered sex offender resides or is an employee or a student;
- any governmental agency conducting confidential background checks for employment, volunteer, licensure, or certification purposes;
- and any health care provider who serves children or vulnerable adults for the purpose of conducting confidential background checks for employment.

*NOTE: Nothing in this section prevents law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Penalty Classification for Violations: [29-411]

- a. Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV Felony;
- b. A second or subsequent violation of the act is a Class III Felony, with a mandatory minimum term of at least one year in prison.
- c. If the violation which caused the person to be placed on the registry was a misdemeanor, a second or subsequent violation of the act shall be a Class IV Felony.

Sexual Predator Residency Restrictions: [29- 4015 et seq.]

A political subdivision *may* enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside.

- Such restrictions must be limited to sexual predators,
- Residency restrictions may extend no more than five hundred

- feet from a school or child care facility,
• Various date restrictions regulate when such laws apply and exemptions for certain offenders.

EPC of Dangerous Sex Offenders: [71-919]

A law enforcement officer may take a person into emergency protective custody (EPC) or continue that person's custody, if there is probable cause to believe that a person is dangerously mentally ill or is a dangerous sex offender, and one of the following applies:

- a. Such person is likely to engage in repeat acts of sexual violence,
- b. Such person is substantially unable to control his or her criminal behavior, or
- c. The person poses a substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or
- d. The person poses a substantial risk of serious harm to themselves within the near future as manifested by evidence of recent attempts or threats of suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

*Note: Emergency Protective Custody is undertaken because the risk of a harm listed above is likely to occur *before* mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated.

Where to Take Them?

A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section [29-4003].

- A person EPC'd who has a prior conviction for a sex offense listed in section [29-4003] shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required.
- After any medical or psychiatric emergency has passed and it is safe to transport, such person shall be transferred to an available jail or Department of Correctional Services facility.

Required Notifications:

Once a person is admitted to a facility under this section, the law enforcement officer shall execute a written certificate prescribed and provided by the Department of Health and Human Services.

- The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations.
- A copy of such certificate shall be immediately forwarded to the county attorney.

Unlawful Use Of The Internet By a Prohibited Sex Offender:

1. Elements: [28-322.05]

It is unlawful for a registered sex offender:

- a. Who is required to register for any listed prohibited offense,
- b. To knowingly and intentionally use a social networking web site, instant messaging, or chat room service,
- c. If such service allows use or access by a person who is less than eighteen years of age.

2. Prohibited Offenses:

A person violates this section if required to register under the

Sex Offender Registration Act because of a conviction for one or more of the following offenses:

- Kidnapping of a minor [28-313];
- Sexual assault of a child first degree [28-319.01];
- Sexual assault of a child second or third degree [28-320.01];
- Incest of a minor [28-703];
- Pandering of a minor [28-802];
- Visual depiction of sexually explicit conduct of a child [28-1463.03 or 28-1463.05];
- Possessing any visual depiction of sexually explicit conduct [28-813.01];
- Criminal child enticement [28-311];
- Child enticement by means of an electronic communication device [28-320.02];
- Enticement by electronic communication device [28-833];
- Attempt or conspiracy to commit an offense listed above.

3. Classification:

- Class I Misdemeanor for a first offense
- Class IIIA Felony for any second or subsequent conviction

*NOTE: Violation of this section includes offenders who must register in Nebraska for a conviction in another U.S. jurisdiction that is a substantial equivalent to one of the listed offenses.

*NOTE: A registered sex offender must disclose all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the person uses or plans to use, all domain names registered by the registrant, and all blogs and Internet sites maintained by the person or to which the person has uploaded any content or posted any messages or information. Any changes in such information must be reported in writing to the sheriff by the next day.

DISCRIMINATION BASED OFFENSES:

Statement of Rights: [28-110]

A person in the State of Nebraska has the right to live free from violence, destruction or vandalism of property, or intimidation by threat of the same regardless of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Enhanced Penalty: Discrimination Based Offenses: [28-111]

Various criminal offenses that are committed because of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability are subject to an enhanced penalty.

Generally:

Enhancement of the penalty also applies if the crime was committed because of the victim's *association* with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Enhanced Penalty:

The offender is subject to the next higher penalty classification than prescribed, unless the offense is already punishable as a Class IB felony or higher classification.

Enumerated offenses:

- Manslaughter [28-305]
- Assault 1st [28-308], 2nd [28-309], or 3rd [28-310] degree;
- Terroristic threats, section 28-311.01;
- Stalking [28-311.03]
- Kidnapping [28-313]
- False imprisonment 1st [28-314], or 2nd [28-315] degree;
- Sexual Assault 1st [28-319] or 2nd or 3rd degree [28-32];
- Sexual Assault of a child [28-319.01 and 28-320.01]
- Arson 1st [28-502], 2nd [28-503], or 3rd [28-504] degree;

- Criminal mischief [28-519]
- Criminal trespass first [28-520], or second [28-521] degree;
- Unauthorized Application Of Graffiti [28-524]

CRIMES AGAINST A PREGNANT WOMAN: [28-115]

Generally:

Various criminal offenses committed against a pregnant woman are subject to an enhanced penalty.

- The prosecutor must prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Enhanced Penalty:

The offender is subject to the next higher penalty classification than prescribed, unless the offense is already punishable as a Class IB felony or higher classification.

Enumerated Offenses:

- Assault and other person crimes by a confined person [28-933];
- Assault 1st [28-308], 2nd [28-309], or 3rd [28-310] degree;
- Assault on an officer first [28-929], second [28-930], or third degree [28-931];
- Assault on an officer using a motor vehicle [28-931.01];
- Domestic Assault in the first, second, or third degree [28-323];
- DUI causing serious bodily injury [60-6,198];
- Sexual Abuse of a protected person 1st or 2nd degree [28-322.04]

- Sexual Abuse of an inmate/parolee 1st [28-322.01], or 2nd degree [28-322.03];
- Sexual Assault first degree [28-319] or second or third degree [28-320];
- Sexual Assault of a child first degree [28-319.01], or second or third degree [28-320.01];

SECTION II

CRIMES AND THEIR ELEMENTS

INCHOATE OFFENSES:

GENERALLY:

An inchoate offense is the crime of preparing for, seeking to commit, or aiding another to commit another crime.

CRIMINAL ATTEMPT:

1. Elements: [28-201]

A person unlawfully attempts to commit a crime if he/she *either*:

- a. Intentionally engages in conduct that would constitute the crime if the attendant circumstances were as he or she believes them to be, OR
- b. Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a *substantial step* in a course of conduct intended to culminate in his or her commission of the crime.
- c. For conduct to be considered a substantial step, it must be strongly corroborative of the defendant's criminal intent.

2. Classification:

- Class II Felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;
- Class III Felony when the crime attempted is a Class II felony;
- Class IIIA Felony when the crime attempted is:
 - a. Sexual assault in the second degree [28-320],
 - b. Manufacturing, distributing, delivering, dispensing, or possessing with intent of a Schedule I, II, or III controlled substances, except for an exceptionally hazardous drug [28-416 (2)(b)];
 - c. Incest under section [28-703],
 - d. Child abuse under section [28-707(5)],
 - e. Assault by a confined person with a deadly or dangerous weapon under section [28-932];

- Class IV Felony when the crime attempted is a Class III felony not listed above;
- Class I Misdemeanor when the crime attempted is a Class IIIA or Class IV felony;
- Class II Misdemeanor when the crime attempted is a Class I misdemeanor; and
- Class III Misdemeanor when the crime attempted is a Class II misdemeanor.

CONSPIRACY:

1. Elements: [28-202]

A person shall be guilty of criminal conspiracy if he/she,;

- a. Has intent to promote or facilitate commission of a felony;
- b. Agrees with one or more persons that one or more of them shall engage in or solicit the conduct, or cause/solicit the result specified by the definition of the offense; and
- c. Someone in the conspiracy commits an overt act in pursuance of the conspiracy.

2. Other Considerations:

- a. A person who conspires to commit a crime with one person, and that other person has conspired with another person to commit the same crime, is guilty of conspiring to commit such crime with such other person or persons whether or not he knows their identity.
- b. A person who conspires to commit multiple crimes is guilty of only one conspiracy if such crimes are the object of the same agreement or continuous conspiratorial relationship.

3. Classification:

Conspiracy is a crime of the same class as the most serious offense that is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II Felony.

- It is a defense to conspiracy that conduct occurred in response to an entrapment.

4. Affirmative Defense:

It is an affirmative defense that defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

ACCESSORY TO A FELONY:

1. Elements: [28-204]

A person is guilty of being an accessory to felony if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense, he or she does any of the following:

- a. Harbors or conceals the other;
- b. Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension;
- c. Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;
- d. Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law;
- e. Volunteers false information to a peace officer; or
- f. By force, intimidation, or deception, obstructs anyone in the performance of any act that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

2. Classification:

- Class III Felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony;
- Class IIIA Felony if the actor violates subdivision (1)(a),

- (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class II felony;
- Class IV Felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class III or Class IIIA felony;
- Class I Misdemeanor if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony;
- Class IV Felony if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a felony of any class other than a Class IV felony.
- Class I Misdemeanor if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

AIDING CONSUMMATION OF A FELONY: [28-205]

1. Elements:

A person is guilty of aiding consummation of felony if he/she:

- a. Intentionally aids another,
- b. To secrete, disguise, or convert the proceeds of a felony,
- c. Or otherwise profit from a felony

2. Classification:

Class IV Felony.

AIDING & ABETTING: [28-206]

A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if he were the principal offender.

OFFENSES AGAINST THE PERSON:

MURDER IN THE FIRST DEGREE:

1. Elements: [28-303]

A person commits murder in the first degree if he or she kills another person under any of the following circumstances:

- a. Purposely and with deliberate and premeditated malice;
- b. In the perpetration of or attempt to perpetrate any of the following crimes: *Sexual assault in the first degree, Arson, Robbery, Kidnapping, Hijacking any public or private means of transportation, Burglary*;
- c. By administering poison or causing the same to be done; or
- d. By purposely procuring the conviction and execution of any innocent person by willful and corrupt perjury or subornation of the same.

2. Classification:

Class I or Class IA Felony, based on [29-2519] to [29- 2524]

MURDER IN THE SECOND DEGREE:

1. Elements: [28-304]

A person commits murder in the second degree if he/she:

- a. Causes the death of a person,
- b. Intentionally, but without premeditation.
 - *Malice* is not a necessary element of 2nd degree murder

2. Classification:

Class IB Felony

MANSLAUGHTER:

1. Elements: [28-305]

A person commits manslaughter if he/she:

- a. Kills another,
- b. Without malice,

- c. Under either of the following circumstances:
 - (1) Upon a sudden quarrel (*voluntary manslaughter*), OR
 - (2) Unintentionally while in the commission of an unlawful act (*involuntary manslaughter*).
- 2. **Classification:**
Class III Felony

MOTOR VEHICLE HOMICIDE: ***2011 Update**

- 1. **Elements:** [28-306]
A person commits motor vehicle homicide by:
 - a. Unintentionally causing the death of another,
 - b. While engaged in the operation of a motor vehicle
 - c. In violation of the law (State or local).
- 2. **Classification:**
 - a. Class I misdemeanor;
 - b. Class IIIA Felony if the proximate cause of the death of another is the operation of a motor vehicle in a reckless [60-6,213] or willful reckless [60-6,214] manner;
 - c. Class III Felony if the proximate cause of the death of another is the operation of a motor vehicle while DUI [60-6,196] or while within a period of revocation of up to fifteen-years for DUI [60-6,197.06]. The court will also revoke the offender for one to fifteen years;
 - d. Class II Felony if the proximate cause of the death of another is the operation of a motor vehicle while DUI [60-6,196] or while within a period of revocation of up to fifteen-years for DUI [60-6,197.06], and the offender has a prior conviction for either one of those offenses. The court will also revoke the offender for fifteen years.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

**MOTOR VEHICLE HOMICIDE
OF AN UNBORN CHILD**

***2011 Update**

1. Elements: [28-394]

It is a violation of this section if any person to:

- a. Unintentionally,
- b. While engaged in the operation of a motor vehicle,
- c. While in violation of a Nebraska law or city/village ordinance,
- d. Cause the death of an unborn child.

2. Classification:

- Class I Misdemeanor
- Class IV Felony (if the proximate cause is reckless driving, willful reckless driving, DUI, or refusal of a chemical test)
- Class III Felony (if the proximate cause of death is DUI or refusal of a chemical test and the driver has a previous conviction for DUI or refusal). Defendant's operator's privilege will also be revoked for up to fifteen years.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

HOMICIDE OF AN UNBORN CHILD

[28-388] to [28-394]

DEFINITIONS AND EXEPTIONS:

- **Premeditation** is designing to do something before it is done.
- **Unborn child** means an individual person in utero at any stage of development, who was alive at the time of the homicidal act and died as a result (whether before, during, or after birth).
- The crimes of homicide of an unborn child do not apply to:
 - a. Any act or conduct by the mother of the unborn child; or
 - b. A medical procedure done with consent of the mother; or
 - c. The lawful dispensing or administering a drug or device.

MURDER OF AN UNBORN CHILD IN THE FIRST DEGREE:

1. Elements: [28-391]

A person commits murder of an unborn child first degree by:

- a. Committing an act or engaging in conduct that causes the death of an unborn child,
- b. Intending, with deliberate and premeditated malice, to kill the unborn child or the mother of the unborn child,
- c. With knowledge of the pregnancy.

2. Classification:

Class IA Felony

MURDER OF AN UNBORN CHILD IN THE 2ND DEGREE:

1. Elements: [28-392]

A person commits murder of an unborn child first degree by:

- a. Committing an act or engaging in conduct that causes the death of an unborn child,
- b. Intending, but without premeditation, to kill the unborn child of another.

2. Classification:

Class IB Felony

MANSLAUGHTER OF AN UNBORN CHILD:

1. Elements: [28-393]

A person commits manslaughter of an unborn child if he or she

- a. Kills an unborn child without malice upon a sudden quarrel with any person or,
- b. Causes the death of an unborn child unintentionally while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary.

2. Classification:

Class III Felony

ASSAULT OF AN UNBORN CHILD

[28-395] to [28-3101]

DEFINITIONS AND EXCEPTIONS:

- The term ***unborn child*** means an individual at any stage of development in utero.
- Assault on an unborn child and assault on the pregnant woman are separate acts for the purposes of prosecution.
- The crimes of assault on an unborn child do not apply to:
 - a. Any act or conduct by the mother of the unborn child; or
 - b. A medical procedure done with consent of the mother; or
 - c. The lawful dispensing or administering a drug or device.

ASSAULT OF AN UNBORN CHILD IN THE FIRST DEGREE:

1. Elements: [28-397]

It is a violation of this section for any person to:

- a. Intentionally or knowingly,
- b. Cause serious bodily injury to an unborn child,
- c. During the commission of any criminal assault on a pregnant woman

2. Classification:

Class III Felony

ASSAULT OF AN UNBORN CHILD SECOND DEGREE:

1. Elements: [28-398]

It is unlawful for any person to:

- a. Recklessly causes serious bodily injury to an unborn child,
- b. With a dangerous instrument,
- c. During the commission of any criminal assault on a pregnant woman

2. Classification:

Class IIIA Felony

ASSAULT OF AN UNBORN CHILD IN THE THIRD DEGREE:

1. Elements: [28-399]

It is unlawful for any person to:

- a. Recklessly cause *serious bodily injury* to an unborn child,
- b. During the commission of any criminal assault on a pregnant woman.

2. Classification:

Class I Misdemeanor

ASSAULT (Non-Domestic):

FIRST DEGREE ASSAULT:

1. Elements: [28-308]

A person commits assault in the first degree by:

- a. Intentionally or knowingly
- b. Causing serious bodily injury to another person.

2. *Serious bodily injury* involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

3. Classification:

Class II Felony

SECOND DEGREE ASSAULT:

1. Elements: [28-309]

A person commits the offense of assault in the second degree under any of the following circumstances:

- a. Intentionally or Knowingly:
 - (1) Causing *bodily injury* to another person,
 - (2) With a dangerous instrument; or
- b. Recklessly:
 - (1) Causing *serious bodily injury* to another person
 - (2) With a dangerous instrument; or
- c. Unlawfully striking or wounding another:

- (1) While legally confined in a jail or an adult correctional or penal institution, or
- (2) While otherwise in legal custody of the Department of Correctional Services, or
- (3) While committed as a dangerous sex offender under the Sex Offender Commitment Act.

2. Definitions:

- **Serious bodily injury** involves a substantial risk of death, or substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;
- **Bodily Injury** means physical pain, illness, or any impairment of physical condition.

3. Classification:

Class III Felony

THIRD DEGREE ASSAULT:

1. Elements: [28-310]

A person commits the offense of assault in the third degree by:

- a. Intentionally, knowingly, or recklessly causes bodily injury to another person; OR
- b. Threatens another in a menacing manner.

2. Classification:

- Class I Misdemeanor
- Class II Misdemeanor if committed in a fight or scuffle entered into by mutual consent

***See index for various types of assault on an officer, domestic assault, sexual assault, or assault by a confined person.**

DOMESTIC ASSAULT

MANDATORY LAW ENFORCEMENT TRAINING: [42-927]

All law enforcement agencies shall provide officers an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the Protection from Domestic Abuse Act, and the services and facilities available to abused family and household members.

DEFINITIONS: [28-323]

- ***Intimate Partner*** means a spouse, a former spouse, persons who have a child in common (whether or not they have been married or lived together at any time), and persons who are or were involved in a dating relationship.
- ***Dating Relationship*** means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. This does not include a casual relationship or an ordinary association in a business or social context.

FIRST DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits first-degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing serious bodily injury to his/her intimate partner.

2. Classification:

- Class III Felony
- Class II Felony for a second or subsequent violation.

SECOND DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits second-degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing bodily injury to his/her intimate partner,
- c. With a dangerous instrument.

2. Classification:

- Class IIIA Felony
- Class III Felony for a second or subsequent violation.

THIRD DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits third degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing *bodily injury* to his/her intimate partner, OR
- c. Threatens an intimate partner with *bodily injury*, OR
- d. Threatens an intimate partner in a menacing manner.

2. Classification:

- Class I Misdemeanor
- Class IV Felony for second or subsequent violation of threatening or causing bodily injury to an intimate partner.

STRANGULATION

1. Elements: [28-310.01]

A person commits strangulation if he/she:

- a. Knowingly or intentionally
- b. Impedes the normal breathing or normal blood circulation
- c. By applying pressure on the throat or neck of another person.

2. Affirmative Defense:

It is an *affirmative defense* that the act constituting strangulation was the result of a legitimate medical procedure

3. Classification:

- a. Class IV Felony
- b. Class III Felony for a second or subsequent offense, or if offender used or attempted to use a dangerous instrument

ASSISTING SUICIDE:

1. Elements: [28-307]

A person commits assisting suicide if he/she:

- a. Aids and abets another in committing or attempting to commit suicide,
 - b. With the intent to assist that person in committing suicide,
2. **Classification:**
Class IV Felony

CHILD ENTICEMENT:

2011 Update

1. **Elements:** [28-311]

A person commits child enticement if he/she

- a. By any means, and without privilege to do so:
- b. Knowingly solicits, coaxes, entices, or lures,
- c. Or *attempts* to solicit, coax, entice, or lure,
- d. Any child under the age of fourteen,
- e. To enter any vehicle,
- f. Or to enter into any place with intent to seclude the child,
- g. Whether or not the person knows the age of the child.

2. **Definition:**

- **Seclude** means take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate a child from his/her parent, guardian, legal custodian or the general public.

3. **Affirmative Defenses:**

An accused may raise an affirmative defense to a charge of child enticement by showing evidence of the following:

- a. The accused had permission (express or implied) of the parent, guardian, or other legal custodian;
- b. The accused acted within the scope of lawful duties as:
 - A law Enforcement Officer, Firefighter (paid or volunteer), or Emergency Services Provider,
 - Other emergency service provider, such as a funeral director, school district employee, or a person rendering emergency care gratuitously;
 - Operator of a government-owned vehicle used for informing, educating, organizing, or transporting children (bookmobile, etc);

- Nonprofit or religious worker providing activities for children;
 - Agent acting under any board of education.
- c. The accused acted in response to a bona fide emergency; or
 - d. The accused reasonably believed the act was necessary to preserve the health, safety, or welfare of the child.
- 4. Classification:**
- Class IIIA Felony;
 - Class III Felony if victim is under 18 and the person has a previous conviction:
- (i) Under this section, OR
 - (ii) For assault, sexual assault of a child, kidnapping, false imprisonment, or child enticement with an electronic communication device.

ELECTRONIC CHILD ENTICEMENT:

1. Elements: [28-833]

It is unlawful for any person nineteen years of age or over:

- a. To knowingly and intentionally utilize an electronic communication device,
- b. To contact a child under sixteen years of age,
- c. Or to contact a peace officer believed by such person to be a child less than sixteen years of age,
- d. And do any of the following:
 - (1) Use or transmit any indecent, lewd, lascivious, or obscene language, writing, or sound;
 - (2) Transmit or otherwise disseminates any visual depiction of *sexually explicit conduct* as defined in section [28-1463.02]; or
 - (3) Offer or solicit any indecent, lewd, or lascivious act.

2. Definitions:

- ***Electronic Communication Device*** means any device, which, in its ordinary and intended use, transmits by

electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.

- ***Sexually Explicit Conduct*** [28-1463.02] means any of the following:
 - (a) Real or simulated intercourse,
 - Whether genital-genital, oral-genital, anal-genital, or oral-anal, or with an artificial genital
 - Between persons of the same or opposite sex
 - Or between a human and an animal;
 - (b) Real or simulated masturbation;
 - (c) Real or simulated sadomasochistic abuse;
 - (d) Erotic fondling;
 - (e) Erotic nudity; or
 - (f) Real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved

3. Venue

Enticement by electronic communication device is deemed to have been committed either at the place where the communication was initiated *or* where it was received.

4. Classification:

Class IV Felony

TERRORISTIC THREATS

1. Elements: [28-311.01]

A person commits terroristic threats if he/she:

- a. Threatens to commit any crime of violence,
- b. With the intent to terrorize another, OR
- c. With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation, OR
- d. In reckless disregard of the risk of causing such terror or

evacuation.

2. Classification:
Class IV Felony

STALKING:

1. Elements: [28-311.03]

- a. Any person who willfully harasses another person
- b. With the intent to injure, threaten or intimidate
- c. Commits the offense of stalking

2. Definitions:

- ***Harass*** means a knowing and willful course of conduct directed at a specific person that seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose,
 - (i) The course of conduct must be such conduct as would cause a reasonable person to suffer substantial emotional distress, and
 - (ii) The course of conduct must also actually cause substantial emotional distress to the person.
- ***Course of Conduct*** means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person, telephoning the person, contacting or otherwise communicating with the person.

3. Classification:

- a. Class I Misdemeanor (first offense)
- b. Class IV Felony (second or subsequent offense within prior seven years for same victim)

HARASSMENT PROTECTION ORDER VIOLATION

1. Elements: [28-311.09]; **2012 Update**

It is unlawful for any person:

- a. To knowingly violate a harassment protection order,
- b. After service or notice of such order.

2. Procedure:

Any victim who has been harassed may file for a harassment protection order by filing a petition with the clerk of the court. The court may then issue an order to enjoin the respondent from:

- a. Imposing any restraint upon the person or liberty of the petitioner,
- b. Harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner,
- c. Telephoning, contacting, or otherwise communicating with the petitioner.

3. Duration of Restrictions:

A harassment protection order is effective for one year unless dismissed or modified by a court.

4. Service and Notice Provisions:

- A court may issue a harassment protection after a hearing or may issue a temporary order ex parte, with notice to respondent of how to request a hearing.
- If the respondent is present at the hearing, such person is deemed to have notice of the harassment protection order and no further service is required for enforcement and prosecution of violations.
- If the respondent is not present at the hearing but was served with a temporary ex parte order, that service will serve as notice of the harassment protection order and violations may be enforced and prosecuted

5. Officer's Duties

A peace officer *may* arrest a person with probable cause to believe that the person has committed a violation of a harassment protection order issued under NE law or a foreign protection order from another state, tribe, or territory.

- A person arrested shall be brought before a court within a reasonable time to establish bond and conditions or release.

6. Classification:

- Class II Misdemeanor

DOMESTIC ABUSE PROTECTION ORDER VIOLATION:

1. Elements: [42-924] **2012 Update**

It is unlawful for any person:

- a. To knowingly violate a Domestic Abuse Protection Order,
- b. After service or notice of such order.

2. Procedure:

Any victim of domestic abuse may file for a harassment protection order by filing a petition with the District Court. The court may then issue the following relief:

- a. Enjoining respondent from imposing any restraint upon the person or liberty of the petitioner,
- b. Enjoining respondent from harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner,
- c. Enjoining respondent from telephoning, contacting, or otherwise communicating with the petitioner,
- d. Removing and excluding the respondent from the home of the petitioner, regardless of ownership of the residence,
- e. Ordering respondent to stay away from any place specified by the court,
- f. Awarding petitioner temporary custody of minor children, not to exceed 90 days,
- g. Enjoining respondent from possessing or purchasing a

firearm,

- h. Ordering other relief necessary for the safety of petitioner and any designated household or family members.

3. Duration of a Domestic Abuse Protection Order:

A Domestic Abuse protection order is effective for one year unless dismissed or modified by a court.

4. Definitions: [42-903]

- **Abuse** means the occurrence of one or more of the following acts between household members:
 - a. Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
 - b. Placing, by means of *credible threat*, another person in fear of bodily injury;
 - c. Engaging in sexual contact or sexual penetration without consent as defined by [28-318].
- **Credible Threat** means a verbal or written threat, or a threat that is implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made by a person with the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her family.
- **Family or Household Members** includes spouses, former spouses, children, persons who are presently or have previously resided together, persons who have a child in common (whether or not they have been married or have lived together at any time), other persons related by consanguinity or affinity, and persons who are presently or have previously been involved in a dating relationship with each other.

5. Service and Notice Provisions:

- A court may issue a harassment protection after a hearing or may issue a temporary order ex parte, with notice to respondent of how to request a hearing.
- If the respondent is present at the hearing, such person is deemed to have notice of the harassment protection order and no further service is required for enforcement and prosecution of violations.
- If the respondent is not present at the hearing but was served with a temporary ex parte order, that service will serve as notice of the harassment protection order and violations may be enforced and prosecuted.

6. Officer's Duties: [42-928], [42-929]

A peace officer *shall* arrest a person and take such person before a judge to determine conditions of release if there is probable cause to believe that the person has committed a violation of any of the following:

- a. A domestic abuse protection order.
- b. An order excluding that person from certain premises issued pursuant to a divorce proceeding under [42-357],
- c. A valid foreign protection order recognized pursuant to section [42-931]
- d. An order excluding that person from certain premises issued if either:
 - (1) The petitioner or applicant provides the peace officer with a copy of such order, or
 - (2) The officer determines that such an order exists after communicating with the local law enforcement agency.

7. Classification:

- Class I Misdemeanor;
- Class IV Felony if the offender has a prior conviction for violating any protection order.

*Note, to be a credible threat, it is not necessary that the person making the threat had the intent to actually carry it out. The fact that the person making the threat was incarcerated will not prevent the threat from being deemed a credible threat.

HAZING:**1. Elements:** [28-311.06]

It shall be unlawful for any person to:

- a. Engage in any activity,
- b. By which a person intentionally or recklessly endangers the physical or mental health or safety of an individual
- c. For the purpose of initiation into, admission into, affiliation with, or continued membership,
- d. With any organization as defined in this section.

2. Definition and Examples:

- a. **Organization** shall mean an organization of student members operating under the sanction of a postsecondary educational institution, but shall not include the alumni organization or any corporation which owns the house or real estate of such organization
- b. **Hazing Activity** includes such acts as whipping, beating, branding, forced and prolonged calisthenics, prolonged exposure to the elements, forced consumption of any food, liquor, beverage, drug, or harmful substance not generally intended for human consumption, prolonged sleep deprivation, or any brutal treatment or the performance of any unlawful act which endangers the physical or mental health or safety of any person.

2. Classification:Class II Misdemeanor

- Any organization whose members commit the offense of hazing shall be punished by a fine of up to ten thousand dollars.
- Consent is not a defense to hazing.

KIDNAPPING:**1. Elements:** [28-313]

A person commits kidnapping if he/she:

- a. Abducts another,

- b. Or, having abducted another, continues to restrain that person with intent to do any of the following:
 - Hold the person for ransom or reward;
 - Use the person as a shield or hostage;
 - Terrorize the person or a third person;
 - Commit a felony; or
 - Interfere with the performance of any government or political function.
- 2. **Classification:**
 - Class IA Felony
 - Class II Felony if the person kidnapped was voluntarily released or liberated alive by the abductor and in a safe place without having suffered serious bodily injury, prior to trial.

FALSE IMPRISONMENT FIRST DEGREE:

- 1. **Elements:** [28-314]

A person commits false imprisonment in the first degree by:

 - a. Knowingly restraining or abducting another person,
 - b. Under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury,
 - c. OR with intent to hold the person in a condition of involuntary servitude.
- 2. **Classification:**

Class IIIA Felony

FALSE IMPRISONMENT SECOND DEGREE:

- 1. **Elements:** [28-315]

A person commits false imprisonment second degree by:

 - a. Knowingly restraining another person,
 - b. Without legal authority.
- 2. **Classification:**

Class I Misdemeanor

VIOLATION OF CHILD CUSTODY:

1. Elements: [28-316]

It is unlawful for anyone, including a natural or foster parent to:

- a. Take or entice any child under nineteen years of age,
- b. From the custody of the child's parent with legal custody, guardian, or other lawful custodian,
- c. Knowing or heedless that he/she has no right to do so.

2. Classification:

- Class II Misdemeanor.
- Class IV Felony if done in violation of a court order with the intent to deprive the lawful custodian of custody.

UNLAWFUL INTRUSION:

****2011***

Update*

1. Elements: [28-311.08]

It is unlawful for any person to:

- a. *Intrude* upon any other person,
- b. Without his or her consent or knowledge,
- c. In a *place of solitude or seclusion*.

2. Definitions:

- ***Intrude*** means either:
 - (a) Viewing of another person in a state of undress as it is occurring; or
 - (b) Recording by video, photographic, digital, or other electronic means of another person in a state of undress.
- ***Place of solitude or seclusion*** means:
 - (a) A place where a person would intend to be in a state of undress and have a reasonable expectation of privacy,
 - (b) Including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

3. Classification:

- Class I Misdemeanor if intrusion is by viewing only,

- Class IV Felony if intrusion is recorded,
 - Class III Felony if a video or an image from the intrusion is distributed to another person or otherwise made public in any manner that would enable it to be viewed by another person.
4. **Other:**
- An offender who is over 19 years of age who commits this offense against a victim who is less than 18 years of age must register as a Sex Offender.
 - This charge must be brought by complaint or indictment within three years of either the offense occurring, discovery of a recording of the violation, the distribution of the recording, or the youngest victim reaching the age of twenty-one years.

ROBBERY:

1. **Elements:** [28-324]

It is unlawful for any person to:

- a. To take any money or personal property of any value,
- b. From a person,
- c. By the use of force and violence, OR by putting a person in fear,
- d. With the intent to steal.

2. **Classification:**

Class II Felony

SEX OFFENSES
[28-317] to [28-322.04]

Special Considerations for Sex Offense Investigations: [28-317]

- a. Nebraska law is intended to protect the victim of criminal sexual offenses at all stages of the judicial process.
- b. The alleged offender shall have constitutionally guaranteed due process procedures preserved.
- c. There shall be a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the citizens of Nebraska.

Definitions: [28-318]

- **Actor** means a person accused of sexual assault;
- **Force or threat of force** means:
 - a. Use of physical force which overcomes the victim's resistance OR
 - b. Threat of physical force, express or implied, against the victim or a third person that:
 - (1) Places the victim in fear of death or serious personal injury to the victim or a third person, and
 - (2) The victim reasonably believes that the actor has the present or future ability to execute the threat.
- **Intimate Parts** means the genital area, groin, inner thighs, buttocks, or breasts;
- **Past Sexual Behavior** means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- **Serious Personal Injury** means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- **Sexual Contact** means contact is only that which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party:

- a. Intentional touching of the victim's sexual or intimate parts, OR
- b. Intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts, OR
- c. Touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor.
- ***Sexual penetration*** means:
 - a. Sexual intercourse in its ordinary meaning, OR
 - b. Cunnilingus, fellatio, anal intercourse, OR
 - c. Any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes
 - d. Sexual penetration does not require emission of semen
- ***Victim*** means the person alleging to have been sexually assaulted
- ***Without Consent*** means:
 - a. Victim was compelled to submit due to the use of force or threat of force or coercion, OR
 - b. Victim expressed lack of consent by words or conduct, OR
 - c. Consent given as a result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor.

Victim's Right to Refuse Polygraph: [29-216]

Law enforcement and other government officials are prohibited from requiring a polygraph examination or truth-telling device of a victim of a sex offense as a condition for proceeding with an investigation

- The refusal of a victim to submit to such an examination shall not prevent the investigation of the offense.

Examination of Victim, Authorization Not Required. [29-4306]

The victim of sexual assault or domestic violence victim may be examined by a health care professional or emergency room without separate authorization by a law enforcement agency.

- With the consent of the victim, such examination shall include the collect forensic evidence using a standardized sexual assault evidence collection kit.
- Examination of an eighteen-year-old victim does not require consent or notification of their parent, guardian, or any other person having custody of the victim.

Costs of Forensic Tests: [13-607]

The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the primary law enforcement agency investigating the reported sexual assault.

Resistance Required by Victim:

The victim need only resist verbally or physically:

- a. To make the victim's refusal to consent genuine and real
- b. And to reasonably make known to the actor the victim's refusal to consent
- c. A victim need not resist verbally or physically if it would be useless or futile to do so.

SEXUAL ASSAULT FIRST DEGREE

1. Elements: [28-319]

Any person who subjects another person to *sexual penetration*:

- a. Without the consent of the victim, OR
- b. Who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, OR
- c. When the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age.

2. Classification:

Sexual assault in the first degree is a Class II Felony

- The sentencing judge shall consider whether the actor caused *serious personal injury* to the victim in reaching a decision on the sentence.
- Mandatory 25 years prison for a 2nd or subsequent offense.

SEXUAL ASSAULT SECOND DEGREE:

1. Elements: [28-320]

Any person who subjects another person to *sexual contact*:

- a. Without consent of the victim,
- b. OR when the actor knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct,
- c. And the actor causes *serious personal injury* to the victim.

2. Classification:

Class III Felony

SEXUAL ASSAULT THIRD DEGREE:

1. Elements: [28-320]

Any person who subjects another person to *sexual contact*:

- a. Without consent of the victim,
- b. OR when the actor knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct (no serious personal injury).

2. Classification:

Class I Misdemeanor

SEXUAL ASSAULT OF A CHILD FIRST DEGREE:

1. Elements: [28-319.01]

First degree sexual assault of a child means either:

1. Subjecting another person to sexual penetration and:
 - a. The victim is under twelve years of age, and

- b. The actor is at least nineteen years of age or older; OR
- 2. Subjecting another person to sexual penetration, and:
 - a. Victim is between twelve and sixteen years of age, and
 - b. The actor is twenty-five years of age or older.
- 2. **Classification:**
 - Class IB Felony
 - a. Minimum 15 years prison for first offense
 - b. Minimum 25 years prison if:
 - Second or subsequent offense, or
 - Prior conviction for first degree sexual assault (or attempt), sexual assault of a child (or attempt), any other state/federal offense with same elements.

*NOTE: The age of the actor is an essential element of the offense that must be proven beyond a reasonable doubt.

SEXUAL ASSAULT OF A CHILD SECOND DEGREE:

- 1. **Elements:** [28-320.01]

A person commits 2nd degree sexual assault of a child by:

 - a. Subjecting another person fourteen years of age or younger,
 - b. To *sexual contact*,
 - c. And the actor is at least nineteen years of age or older,
 - d. And the actor causes *serious personal injury* to the victim.
- 2. **Classification:**
 - a. Class II Felony (first offense)
 - b. Class IC Felony with minimum 25 years prison if:
 - Second or subsequent offense, or
 - Previous conviction for 1st degree sex assault (or attempt), 1st degree sex assault of a child (or attempt), or any other state/federal offense with same elements.

SEXUAL ASSAULT OF A CHILD THIRD DEGREE:

- 1. **Elements:** [28-320.01]

A person commits 3rd degree sexual assault of a child by:

- a. Subjecting another person fourteen years of age or younger.
 - b. To *sexual contact* (not causing serious personal injury),
 - c. And the actor is at least nineteen years of age or older.
2. **Classification:**
- a. Class IIA Felony (first offense)
 - b. Class IC Felony if:
 - (1) Second or subsequent offense, or
 - (2) Previous conviction for 1st degree sexual assault (or attempt), 1st degree sexual assault of a child (or attempt), or any other state/federal offense with same elements.

SEXUAL ASSAULT; USE OF COMPUTER:

1. **Elements:** [28-320.02]
- No person shall *knowingly*:
- a. Solicit, coax, entice, or lure,
 - b. A child sixteen years of age or younger,
 - c. OR a peace officer who is believed by such person to be a child sixteen years of age or younger,
 - d. By means of an *electronic communication device*,
 - e. To engage in an act that would be a sexual assault or sexual assault of a child.
2. **Classification:**
- Class ID Felony for first offense and no relevant prior convictions;
 - Class IC Felony if:
 - (1) Second or subsequent offense, or
 - (2) Prior conviction for Assault, Kidnapping, Child Enticement, False Imprisonment, Felony Sexual Assault (1st or 2nd degree), Sexual Assault of a Child, Possession or Distribution of Child Pornography, or Enticement by Electronic Communication Device.

NOTE: A person shall not be convicted of *both* a violation of this section (luring a child using a computer) and a completed (physical) sexual assault if the violations arise out of the same set of facts with the same victim.

SEXUAL ABUSE OF AN INMATE OR PAROLEE, 1st DEGREE:

1. Elements: [28-322.02]

It is unlawful for any *person* to:

- a. Subjects an inmate or a parolee,
- b. To *sexual penetration*.

2. Definitions:

- ***Inmate or Parolee*** means an individual confined in a Dept. of Correctional Services facility or a city or county correctional or jail facility or under parole supervision
- ***Person*** means any of the following:
 - a. An employee or contract worker of the Dept. of Correctional Services or Parole Administration (including central administration);
 - b. An employee of a city/county correctional or jail facility (including central administration);
 - c. Anyone, other than an inmate's spouse, who has authorized control of an inmate or his/her activities;
 - d. An employee of the Office of Probation Administration who performs official duties within any facility operated by the Dept. of Correctional Services or a city/county correctional or jail facility.

3. Classification:

Class III Felony

- It is not a defense to this section that the inmate or parole consented to the sexual contact or penetration.

SEXUAL ABUSE OF AN INMATE OR PAROLE 2nd DEGREE:

1. Elements: [28-322.03]

It is unlawful for any *person* to:

- a. Subjects an inmate or parolee,
 - b. To *sexual contact*.
2. **Definitions:**
Same as [28-322.02].
3. **Classification:**
Class IV Felony
 - It is not a defense to this section that the inmate or parolee consented to the sexual contact or penetration.

SEXUAL ABUSE OF A PROTECTED PERSON 1ST DEGREE:

1. **Elements:** [28-322.04]
It is unlawful for:
 - a. Any employee of the Department of Health and Human Services (including administration and contract employees),
 - b. To subject a person in the care or custody of the DHHS,
 - c. To *sexual penetration* (as defined in [28-318])
2. **Classification:**
Class III Felony
 - Consent by the protected individual is not a defense.

SEXUAL ABUSE OF A PROTECTED PERSON 2nd DEGREE:

1. **Elements:** [28-322.04]
It is unlawful for:
 - a. Any employee of the Department of Health and Human Services (including administration and contract employees).
 - b. To subject a person in the care or custody of the DHHS,
 - c. To *sexual contact* (as defined in [28-318]).
2. **Classification:**
Class IV Felony (Consent is not a defense).

VULNERABLE ADULT ABUSE:

1. Elements: [28-386]

It is unlawful for any person:

- a. To knowingly and intentionally,
- b. Commit any act,
- c. Causing or permitting a vulnerable adult to be:
 - Physically injured;
 - Unreasonably confined;
 - Sexually abused;
 - Exploited;
 - Cruelly punished; or
 - Denied essential services.

2. Definition: [28-371]

A **vulnerable adult** is any person 18 years or older who has a substantial mental or functional impairment or who has a guardian under the Nebraska Probate Code.

3. Law Enforcement Duties:

Upon receipt of a report of vulnerable adult abuse, it shall be the duty of a law enforcement agency to:

- a. Make an investigation if deemed warranted,
- b. Take immediate steps necessary to protect the vulnerable adult,
- c. Institute legal proceedings if appropriate,
- d. The law enforcement agency shall notify the Dept. of Social Services of an investigation no later than the next working day following receipt of the report.

4. Classification:

Class IIIA Felony

*NOTE: For a complete overview of the Adult Protective Service Act, see [28-348] to [28-387].

DRUGS AND NARCOTIC VIOLATIONS:

TERMS DEFINED:

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

- **Administer** shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;
- **Administration** shall mean the Drug Enforcement Administration, United States Department of Justice;
- **Controlled substance** shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Note, a controlled substance analogue is to be treated as a controlled substance. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any over the counter, non-prescription non-narcotic substance.
- **Department** shall mean the Department of Health and Human Services;
- **Dispense** shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;
- **Distribute** shall mean to deliver other than by administering or dispensing a controlled substance;
- **Drug** shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

- ***Deliver or delivery*** shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;
- ***Exceptionally hazardous drug*** shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) Methamphetamine;
- ***Manufacture*** shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, including any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use (except for the manufacture of Methamphetamine);
- ***Marijuana*** shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds;
- ***Methamphetamine*** means Methamphetamine, its salts, optical isomers, and salts of its isomers;
- ***Narcotic drug*** shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (a) Opium, opium poppy and poppy straw, coca leaves, and opiates;
 - (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or
 - (c) A substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision.

- ***Opiate*** shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.;
- ***Opium poppy*** shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof;
- ***Paraphernalia*** means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing a controlled substance into the human body;
- ***Poppy straw*** shall mean all parts, except the seeds, of the opium poppy after mowing;
- ***Person*** shall mean any corporation, association, partnership, limited liability company, or one or more individuals;
- ***Production*** shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;
- ***Uniform Controlled Substances Act*** means sections [28-401] to [28-456.01] of the Nebraska Revised Statutes.

JUVENILES AND CONTROLLED SUBSTANCE VIOLATIONS; ADDITIONAL PENALTIES:

In addition to the general penalties for a controlled substance violation, a person eighteen years of age or younger may be subject to the following additional penalties under [28-416(18)]:

- For the first offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for thirty days and require such person to attend alcohol education;
- For a second offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for ninety days, and require such person to complete twenty to forty hours of community service and to attend an alcohol education class;
- For a third or subsequent offense the court may impound any

driver's license or permit (or prohibit the offender from getting one) for twelve months and require such person to complete no fewer than sixty hours of community service, to attend an alcohol education, and to submit to an alcohol assessment.

***CONTROLLED SUBSTANCES, SEIZING
ITEMS WITHOUT A WARRANT:***

1. Elements: [28-431]

An officer can seize the following without a search warrant:

- a. All unauthorized and unlawful controlled substances;
- b. All raw materials and equipment used in the production of unauthorized and unlawful controlled substances;
- c. All containers of the items in (a) and (b);
- d. All books, records and research used in violation of this Act;
- e. All conveyances intended to transport items in (a) and (b);
- f. All drug paraphernalia;
- g. All money used or intended to be used to violate this act.

2. Disposition of Seized Money and Property:

The Nebraska Legislature has established procedures for the forfeiture of money intended to be used in violation of drug laws (see [28-431] and [28-1439.02] to [28-1439.05]).

- Within 10 days following seizure, the county attorney must file a petition in district court for disposition of the property.
- The owner of the property may petition the court to release it by showing they had no knowledge that such was being used to violate the drug laws.
- Forfeited money and proceeds of sold property shall be turned over to the County Treasurer and divided in half. 50% of such money and property are disposed of according to the Nebraska Constitution, and 50% to the County Drug Law Enforcement and Education Fund.

ADMINISTERING SECRET MEDICINE:

1. Elements: [28-403]

It is unlawful for a physician or other person:

- a. To prescribe any drug or medicine to another person,
- b. The true nature and composition of which, if inquired of, is not truly made known,
- c. But of which is avowed to be a secret medicine or composition,
- d. Thereby endangering the life of such other person.

2. Classification:

Class III Misdemeanor

ADMINISTERING NARCOTICS TO A DEPENDANT PERSON:

1. Elements: [28-412]

It is unlawful to:

- a. Prescribe, administer, or dispense any narcotic drug listed in section [28-405],
- b. Except *buprenorphine*,
- c. For the purpose of detoxification treatment or maintenance treatment,
- d. Except as otherwise provided for by law.

2. Lawful Dispensing of Narcotics:

A narcotic drug may be administered or dispensed (under certain conditions) to a narcotic-dependent person for detoxification treatment or maintenance treatment by a registered practitioner, a physician, or in a hospital.

3. Classification:

Class IV Felony

CONTROLLED SUBSTANCES;

MANUFACTURE AND DISTRIBUTION:

1. Elements: [28-416(1)]

It shall be unlawful to:

- a. Knowingly or intentionally,
- b. Manufacture, Distribute, Deliver, or Dispense,

- c. A controlled substance.
- 2. **Classification:**
 - Class II Felony for any exceptionally hazardous drug classified in Schedule I, II, or III;
 - Class III Felony for any other controlled substance classified in Schedule I, II, or III
 - Class IIIA Felony for a controlled substance classified in Schedule IV or V;
 - See enhanced penalty provisions below.

POSSESSION OF A CONTROLLED

****2011***

Update*

SUBSTANCE:

1. Elements: [28-416(3)]

It shall be unlawful to:

- a. Knowingly or intentionally,
- b. Possess a controlled substance (except marijuana or synthetic cannabinoids),
- c. Unless *lawfully* obtained by medical order or otherwise.

2. Classification:

Class IV Felony

POSSESSION OF A CONTROLLED SUBSTANCE

WITH INTENT:

1. Elements: [28-416(1)]

It shall be unlawful to:

- a. Knowingly or intentionally,
- b. Possess a controlled substance,
- c. With intent to manufacture, distribute, deliver, or dispense.

2. Classification:

- Class II Felony for any exceptionally hazardous drug classified in Schedule I, II, or III;
- Class III Felony for any other controlled substance classified in Schedule I, II, or III;

- Class IIIA Felony for a controlled substance classified in Schedule IV or V;
- See enhanced penalty provisions below.

COUNTERFEIT CONTROLLED SUBSTANCES:

1. Elements: [28-416(1)]

It shall be unlawful to:

- Knowingly or intentionally,
- Create, Distribute, Or Possess with intent to distribute,
- A counterfeit controlled substance.

2. Definition:

A *Counterfeit Controlled Substance* is a controlled substance or the container/labeling of one which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

3. Classification:

- Class II Felony for any exceptionally hazardous drug classified in Schedule I, II, or III;
- Class III Felony for any other controlled substance classified in Schedule I, II, or III;
- Class IIIA Felony for a controlled substance classified in Schedule IV or V;
- See enhanced penalty provisions below.

IMITATION CONTROLLED SUBSTANCES:

1. Elements: [28-445]

It is unlawful to:

- Knowingly and intentionally,

- b. Manufacture, distribute, deliver, or possess with intent to distribute or deliver,
- c. An imitation controlled substance.

2. Definition:

An *Imitation controlled substance* is not a controlled substance but is represented in a way that would lead a reasonable person to believe the substance is a controlled substance. All relevant factors will be considered in determining whether a substance is an imitation controlled substance, including, but not limited to:

- Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;
- Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;
- Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition legally sold over the counter;
- Whether the substance is packaged in a manner and quantity similar to illicit controlled substances;
- Whether the dosage unit appearance is deceptively similar to that of a particular controlled substance; and
- Whether the substance is distributed to persons who represent it as a controlled substance, under circumstances that indicate the distributor knows, intends, or should know that his or her distributee is making or will make such representations.

3. Classification:

- Class III Misdemeanor for the first offense;
- Class II Misdemeanor for a second or subsequent offense;
- Any substance possessed, distributed, or delivered in violation of this section shall be subject to seizure and forfeiture as provided in section [28- 431].

CONTROLLED SUBSTANCE ANALOGUE: [28-401(30)]

1. Defined:

A controlled substance analogue is a substance that either:

- a. Has a chemical structure substantially similar to a Schedule I or Schedule II controlled substance, OR
- b. Or has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than that of a Schedule I or Schedule II controlled substance.

2. Elements:

To the extent intended for human consumption, a controlled substance analogue shall be treated as a controlled substance under Schedule I of section [28-405] for purposes of the Uniform Controlled Substances Act.

ENHANCED PENALTIES FOR DRUG OFFENSES NEAR SCHOOLS, KIDS, ETC: [28-416(4)]

1. Elements:

a. Enhanced penalties apply to:

- (1) Any person eighteen years of age or older
- (2) Who knowingly or intentionally,
- (3) Manufactures, distributes, delivers, dispenses,
- (4) Or possesses with intent to manufacture, distribute, deliver, or dispense,
- (4) A controlled substance or a counterfeit controlled substance,

b. Under any of the following circumstances:

- (1) To a person under the age of eighteen years,
- (2) Within one thousand feet of a school, playground, college, or university;
- (3) Within one hundred feet of a youth center, public swimming pool, or video arcade facility;
- (4) Any person knowingly or intentionally possessing a firearm while in violation.

2. Classification:

Such offender shall be punished by the next higher penalty classification than the penalty prescribed.

- But in no event shall such person be punished by a penalty greater than a Class IB Felony.

FIREARMS AND CONTROLLED SUBSTANCE VIOLATIONS:

1. Elements: [28-416(16)]

It is unlawful for any person to:

- a. Knowingly or intentionally possess a firearm,
- b. While such person,
- c. Manufactures, distributes, delivers, dispenses,
- d. Or possesses with intent to do the same,
- e. A controlled substance or a counterfeit controlled substance (other than marijuana or synthetic cannabinoid).

2. Classification:

Such offender shall be punished by the next higher penalty classification than the penalty prescribed.

- But in no event shall such person be punished by a penalty greater than a Class IB Felony.

MONEY & CONTROLLED SUBSTANCE VIOLATIONS:

1. Elements: [28-416(17)]

It is unlawful to:

- a. Knowingly or intentionally be in possession of money,
- b. Used or intended to be used to facilitate the manufacture, distribution, delivery, or dispensing,
- c. Or the possession with intent to manufacture, distribute, deliver, or dispense,
- d. A controlled substance or a counterfeit controlled substance.

2. Classification:

Class IV Felony

***INVOLVING MINORS IN CONTROLLED
SUBSTANCE VIOLATIONS:***

1. Elements: [28-416(5)]

It is unlawful for any person eighteen years of age or older,

- a. To knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen,
- b. To manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, possess with intent to do the same, or to aid and abet any person to do the same,
- c. A controlled substance or a counterfeit controlled substance.

2. Classification:

- First Offense is punished by the next higher penalty classification than the penalty prescribed, depending upon the controlled substance involved.
- Second or subsequent violation is punished by the next higher penalty classification than that prescribed for a first violation.
- In no event shall an offender be punished by a penalty greater than a Class IB Felony.
- It is not a defense that the offender did not know the age of the person.

***METHAMPHETAMINE, COCAINE, CRACK COCAINE,
HEROIN, OR AMPHETAMINE VIOLATIONS:***

1. Elements:

It is unlawful for any person to:

- a. Knowingly or intentionally,
- b. Manufacture, Distribute, Deliver, Dispense, or Possess with intent to do the same,
- c. Any of the following controlled substances:

- (1) Cocaine, or any mixture or substance containing a detectable amount of cocaine;
- (2) Base Cocaine (Crack) or any mixture or substance containing a detectable amount of base cocaine;
- (3) Heroin, or any mixture or substance containing a detectable amount of heroin;
- (4) Amphetamine, its salts, optical isomers, and salts of its isomers; or
- (5) Methamphetamine, its salts, optical isomers, and salts of its isomers.

2. Classification:

- Class IB Felony for 140 grams or more;
- Class IC Felony for 28 grams to less than 140 grams;
- Class ID Felony for 10 grams to less than 28 grams.

***POSSESSION OF OTHER METHAMPHETAMINE
INGREDIENTS:***

1. Elements: [28451 TO 28-452]

It is unlawful for any person to possess:

- a. Anhydrous Ammonia, Ephedrine, Pseudoephedrine, or Phenylpropanolamine, or salts or isomers,
- b. With intent to manufacture Methamphetamine.

2. Classification:

Class IV Felony

PSEUDOEPHEDRINE OR PHENYLPROPANOLAMINE

RESTRICTIONS:

2011 Update

1. Packaging Restrictions: [28-456], [28-456.01]

Any drug products containing pseudoephedrine, phenylpropanol-amine, or their salts or optical isomers may be sold without a prescription only if they are:

- a. Labeled/marketed consistent with the pertinent OTC Tentative Final or Final Monograph;
- b. Manufactured/distributed for legitimate medicinal use in a

- manner that reduces or eliminates the likelihood of abuse;
- c. Packaged sizes (liquid or non-liquid) of not more than three and six-tenths grams.
2. **Selling Restrictions:** [28-456]
Any drug products containing such substances may be sold only if they are:
- a. Sold by a person, eighteen years of age or older, in the course of his or her employment;
 - b. Purchaser must be eighteen years of age or older and show proof of identification (valid Driver's License, State I.D., military I.D., alien registration card, or passport). ;
 - c. Drug product must be kept behind a counter, or in an area not accessible to customers, or in a locked case;
 - d. Violation of a sales restriction section is a civil penalty of fifty dollars per day, one hundred dollars per day for a second or any subsequent violation.
 - Any such drug products shall be seized and destroyed upon the finding of a violation of this section.
3. **Purchase Limits:** [28-456.01]
- a. **24 Hour Limit – 3.6 Grams**
No person shall purchase, receive, or otherwise acquire any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order.
 - Class IV Misdemeanor for the first offense,
 - Class III Misdemeanor for each subsequent offense.
 - b. **30 Day Limit – 9 Grams**
No person shall purchase, receive, or otherwise acquire any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order.
 - Class IV Misdemeanor for the first offense,
 - Class III Misdemeanor for each subsequent offense.

4. Enforcement:

The Department of Health and Human Services, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section.

METHAMPHETAMINE PRECURSOR RESTRICTIONS:

1. Definitions: [28-458]

- ***Exchange*** means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;
- ***Methamphetamine precursor*** means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;
- ***Seller*** means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and
- ***Stop-sale alert*** means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.

2. Seller Recordkeeping Requirements: [28-459]

Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:

- a. The name, age, and address of a person purchasing, receiving, or otherwise acquiring a methamphetamine precursor;
- b. The name of the product and quantity of product purchased;
- c. The date and time of the purchase;

- d. The name or initials of the seller who sold the product; and
 - e. The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.
- 3. Exceptions:**
- If a seller is unable to submit information electronically, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply.
- The Attorney General may grant a waiver exempting a seller from compliance with the recordkeeping requirements subsection upon a showing of good cause.
 - Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present. This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a licensed pharmacist.
- 4. Law Enforcement Access to the Exchange: [28-460]**
- As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.
- 5. Violation**
- It is unlawful for anyone who otherwise lawfully sells any drug product that is a methamphetamine precursor to:
- a. Knowingly fail to submit methamphetamine precursor information to the National Precursor Log Exchange; OR
 - b. Knowingly submit incorrect information to the exchange.
 - c. Violation is a Class IV Misdemeanor.

EXPOSING METHAMPHETAMINE OR INGREDIENTS TO A CHILD OR VULNERABLE ADULT:

1. Elements: [28-457]

It is unlawful for any person to:

- a. Knowingly or intentionally,
- b. Cause or permit,
- c. A child (under 19 years of age), or vulnerable adult,
- d. To ingest, inhale or have contact with,
- d. Methamphetamine, a chemical substance, or paraphernalia.

2. Definition:

Chemical Substance means a substance intended to be used as an immediate precursor or reagent or any other chemical intended to be used in the manufacture of Methamphetamine.

3. Classification:

- a. Class I Misdemeanor for cases involving *inhaling* or *contact*
- b. Class IV Felony for any second or subsequent conviction
- c. Class IIIA Felony for all cases of *ingestion*, or if a child or vulnerable adult actually suffers *serious bodily injury*;

3. Affirmative Defense:

A defendant may offer the defense to prosecution that a chemical substance was provided by lawful prescription for the child or vulnerable adult and it was administered to them according to prescription.

*NOTE: Any child or vulnerable adult who resides with a person violating this section shall be taken into protective custody

CONTROLLED SUBSTANCE INGREDIENTS;

OTHER RESTRICTIONS ON OTC SUBSTANCES:

1. Elements: [28-450]

- a. No person shall sell, distribute, or otherwise transfer,

- b. Any drug product,
 - c. Containing ephedrine, pseudoephedrine, or phenylpropanolamine,
 - d. Or their salts, isomers, or salts of isomers,
 - e. Knowing that such drug products will be used as an immediate precursor to any controlled substance.
 - f. Or with reckless disregard to how the product will be used.
2. **Classification:**
Class III Misdemeanor

DRUG PARAPHERNALIA - USE OR POSSESSION:

1. **Elements:** [28-441]
It shall be unlawful for any person to:
- a. Use, or possess with the intent to use
 - b. Drug paraphernalia
 - c. To manufacture, inject, ingest, inhale, or otherwise introduce into the human body
 - d. A controlled substance.
2. **Classification:**
Infraction

DRUG PARAPHERNALIA – DELIVERY OR MANUFACTURE:

1. **Elements:** [28-442]
It shall be unlawful for any person to:
- a. Deliver or possess with intent to deliver,
 - b. OR manufacture with the intent to deliver,
 - c. Drug paraphernalia,
 - d. Knowing or under circumstances they reasonably should know,

- e. That it will be used to manufacture, inject, ingest, inhale, or otherwise be used to introduce into the human body,
 - f. A controlled substance.
- 2. Classification:**
- a. Class II Misdemeanor
 - b. Class I Misdemeanor if the offender is over 18 and delivers drug paraphernalia to a minor under 18 years of age who is at least three years younger than the offender. [28-443]

DRUG PARAPHERNALIA - UNLAWFUL ADVERTISEMENTS:

- 1. Elements:** [28-444]
- It is unlawful for any person to:
- a. Place any advertisement in any newspaper, magazine, handbill, or other publication,
 - b. Knowing, or under circumstances where one reasonably should know,
 - c. The purpose is to promote the sale of objects for use as drug paraphernalia.
- 2. Classification:**
- Class III Misdemeanor

POSSESSION OF MARIJUANA:

- 1. Elements:** [28-416(13)]
- a. It is unlawful to knowingly or intentionally,
 - b. Possess marijuana.
- 2. Classification:**
- The penalty for possession of marijuana depends on the quantity:
- a. ***Less than one ounce:***
 - (1) The first offense is an Infraction with a fine of \$300.
 - A judge may also order a drug education course.
 - (2) A second offense is a Class IV Misdemeanor with a fine of \$400.
 - The offender may be imprisoned up to 5 days.

- (3) The third and any subsequent offense is a Class IIIA Misdemeanor with a fine of \$500.
 - And the offender will be imprisoned not to exceed seven days.
- b. ***More than one ounce but less than one pound:***
 - Class IIIA Misdemeanor.
- c. ***More than one pound***
 - Class IV Felony

*Note: The weight of marijuana means its weight at or about the time it is seized or comes into the possession of law enforcement, whether cured or uncured at that time.

- In all cases of possession of marijuana less than one ounce, the offender is to receive a citation.

SYNTHETIC CANNABINOIDS:

****2013 Update***

These are synthetic drugs similar to marijuana, known by such names as “K2” or “Spice”. These are Schedule 1 controlled substances.

1. **Elements:** [28-416], [28-405(c)(25)]
 - a. It is unlawful to knowingly or intentionally,
 - b. Possess, manufacture, or distribute,
 - c. Any material, compound, mixture, or preparation containing any quantity of the substances listed at [28-405(c)(25)(A-K)].
2. **Classification:** [28-416(13)]
 - Possession of any quantifiable amount of a synthetic cannabinoid has the same penalty as for possession of marijuana one ounce or less.
 - A synthetic cannabinoids is a Schedule I controlled substance, so the laws of manufacturing or distribution apply as well.

SYNTHETIC PHENETHYLAMINES:***2013 Update**

These are synthetic drugs known by names such as “*Blue Mystic*” or “*Smiles*”, and are Schedule I controlled substances.

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance,
- c. Containing any quantity of the materials, compounds, mixtures, or structures listed in Schedule I of [28-405 (c)(26)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class III Felony.

SYNTHETIC TRIPTAMINES:***2013 Update**

These are synthetic drugs known by names such as “*Foxy*” or “*Methoxy*”, and are Schedule I controlled substances.

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance,
- c. Containing any quantity of the materials, compounds, mixtures, or structures listed in Schedule I of [28-405 (c)(27)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class III Felony.

SYNTHETIC CATHINONES (*Bathsalts*):

These are compounds known as “bathsalts” or “Khat” and are Schedule I Controlled Substances. Prohibited substances include mephedrone, methylone, and 4-Methylenedioxypyrovalerone (MDPV).

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance,

- c. Containing any quantity of the materials, compounds, mixtures, or structures listed in Schedule I of [28-405 (c)(28)].
- 2. Classification:**
- Possession is a Class IV Felony.
 - Manufacturing or trafficking is a Class III Felony.

NARCOTIC DRUG PACKAGING & RECORDS VIOLATIONS:

1. Elements: [28-417]

It shall be unlawful for any person:

- a. To omit, remove, alter, or obliterate a symbol required by federal or state law,
- b. To alter, deface, or remove any label affixed to a package of narcotic drugs; or
- c. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Uniform Controlled Substances Act, or
- d. To refuse any entry into any premises for inspection authorized by the act.

2. Classification:

Class III Misdemeanor

MAINTAINING A DRUG HOUSE:

1. Elements: [28-417(e)]

It is unlawful for any person:

- a. To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or place,
- b. That such person knows or should know,
- c. Is resorted to by persons using, keeping, or selling controlled substances in violation of the Uniform Controlled Substances Act.

2. Classification:

Class III Misdemeanor

***POSSESSION OF PRESCRIPTION NARCOTICS IN AN
UNAUTHORIZED CONTAINER:***

1 Elements: [28-417(f)]

It is unlawful for any person:

- a. To whom or for whose use any controlled substance has been lawfully prescribed, sold, or dispensed,
- b. Or the owner of any animal for which any such substance has been lawfully prescribed, sold, or dispensed,
- c. To possess it in a container other than which it was delivered.

2. Classification:

Class III Misdemeanor

***BEING UNDER THE INFLUENCE OF ANY CONTROLLED
SUBSTANCE:***

1. Elements: [28-417(g)]

It is unlawful for any person:

- a. To be under the influence of any controlled substance,
- b. For a purpose other than the treatment of a sickness or injury as prescribed or administered by a practitioner.

2. Classification:

Class III Misdemeanor

*Note: It is not necessary to prove that the accused was under the influence of any specific controlled substance.

- It is sufficient that the accused manifested physical and physiological symptoms or reactions caused by the use of any controlled substance.

CONTROLLED SUBSTANCE REGISTRANT VIOLATIONS:

1. Elements: [28-418(a-h)]

It shall be unlawful for any person who is a registrant to distribute a controlled substance classified in Schedule I or II of section [28-405] in the course of his or her legitimate business,

and knowingly or intentionally do any of the following:

- a. Use a registration number which is fictitious, revoked, suspended, or issued to another person;
- b. Acquire or obtain or to attempt to acquire or obtain

Continued on the next page

- possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;
 - c. To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under the Uniform Controlled Substances Act;
 - d. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark upon any drug or container or labeling so as to render such drug a counterfeit controlled substance;
 - e. To distribute or dispense a controlled substance in violation of section [28-414].
 - f. To manufacture a controlled substance not authorized by his or her registration;
 - g. To distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;
2. **Definition:**
A **Registrant** is any person who has a controlled substances registration issued by the state, the Drug Enforcement Administration, or the United States Department of Justice.
3. **Classification:**
Class IV Felony

POSSESSION OF A FORGED PRESCRIPTION:

1. **Elements:** [28-418(h)]
It is unlawful for any person:
- a. To possess a false or forged medical order,
 - b. For a controlled substance,
 - c. Issued by a practitioner authorized to prescribe.
2. **Classification:**
Class IV Felony

*NOTE: This section does not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties.

UNLAWFULLY PROCURING OF A CONTROLLED SUBSTANCE:

1. Elements: [28-418(i)]

It is unlawful for any person:

- a. To communicate information to a practitioner,
- b. In an effort to unlawfully procure:
 - (1) A controlled substance,
 - (2) The administration of a controlled substance,
 - (3) Or a medical order for a controlled substance issued by a practitioner authorized to prescribe.

2. Classification:

Class IV Felony

DRUG DEALER TAX: [77-4301] to [77-4316]

A tax is imposed on illegal marijuana and controlled substances:

1. Elements:

- a. No dealer possess,
- b. Marijuana, controlled substance, or imitation controlled substance,
- c. Unless the tax has been paid,
- d. As evidenced by an official stamp, label, or other indicium.

2. Definitions:

For purposes of the Drug Tax, a **Dealer** is a person who unlawfully manufactures, produces, ships, transports, imports, or in any manner acquires or possesses:

- Six or more ounces of marijuana, or
- Seven or more grams of any controlled substance which is sold by weight, or
- Ten or more dosage units of any controlled substance that is not sold by weight.

3. Classification:

Class IV Felony.

- The dealer must also pay the tax.

*NOTE: Marijuana is not included in the definition of controlled substance for the purpose of this section, but is subject to its own tax.

USING OR SELLING INTOXICATING COMPOUNDS:

1. Elements: [28-419] to [28-423]

- a. No person shall:
 - (1) Breathe, inhale, or drink; or
 - (2) Knowingly sell or offer for sale, deliver or give to any person (when such person knows or should know of the intended use of the substance), or
 - (3) Induce or entice any person to breath, inhale, drink, sell, deliver, or give to any person,
- b. Any compound, liquid, or chemical, or any other substance,
- c. For the purpose of inducing an intoxicated condition.

2. Prohibited Substances:

This section applies to any compound, liquid, or chemical containing:

- Acetate, Acetone, Benzene, Butyl Alcohol, Cyclohexanone, Ethyl Acetate, Ethyl Alcohol, Ethylene Dichloride, Ethylene Trichloride, Hexane, Isopropanol, Isopropyl Alcohol, Methyl Alcohol, Methyl Cellosolve Acetate, Methyl Ethyl Ketone, Methyl Isobutyl Ketone, Pentachlorophenol, Petroleum Ether, Toluene, Toluol, Trichloroathane, Trichloroethylene,
- Or any other substance that induces an intoxicated condition,

- 3. *Intoxicated Condition*** means any condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing,

distorting, or disturbing the auditory, visual, mental, or nervous processes.

4. Records Required of Sale

Every person selling or offering for sale at retail any of the prohibited substances shall maintain a register in which are recorded the date of each sale, the quantity sold, and the name and address of the purchaser.

- Records of each sale shall be available for inspection by any peace officer for at least one year

5. Classification

Class III Misdemeanor

*NOTE: Alcoholic Liquor and lawfully used medical or dental prescription substances are not included in this section as intoxicating compounds.

OFFENSES AGAINST PROPERTY:

ARSON FIRST DEGREE:

1. Elements: [28-502]

A person commits arson in the first degree if he/she:

- a. Intentionally damages a building or property contained within a building,
- b. By starting a fire or causing an explosion,
- b. Or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief,
- c. When another person is present in the building at the time
- d. And either:
 - (1) The actor knows that fact, or
 - (2) The circumstances are such as to render the presence of a person therein a reasonable probability.

2. Classification:

Class II Felony

ARSON SECOND DEGREE:

1. Elements: [28-503]

A person commits arson in the second degree if he/she:

- a. Intentionally damages a building or property contained within a building,
- b. By starting a fire or causing an explosion
- c. Or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief.

2. Affirmative Defenses:

- a. No person other than the accused has a security or proprietary interest in the damaged building; or
- b. If other persons have such interests, all of them consented to his or her conduct; or
- c. The accused sole intent was to destroy or damage the building for a lawful and proper purpose.

3. Classification:

Class III Felony

ARSON THIRD DEGREE:

1. Elements: [28-504]

A person commits arson in the third degree if he/she:

- a. Intentionally sets fire to, burns, causes to be burned,
- b. Or by the use of any explosive,
- c. Damages or destroys, or causes to be damaged or destroyed,
- d. Any property of another person without such other person's consent.

2. Classification:

- Class I Misdemeanor if the damages are less than one hundred dollars
- Class IV Felony if the damages amount to one hundred dollars or more

BURNING TO DEFRAUD INSURER:

1. Elements: [28-506]

This crime is committed by any person who,

- a. Sets fire to or burns or attempts so to do,
- b. Or who causes, aids, counsels or procures the burning,
- c. Of any building or any personal property,
- d. Which is insured by any person, company or corporation against loss or damage by fire,
- e. With the intent to deceive or harm an insurer

2. Classification:

Class IV Felony

- It does not make any difference whether the offender owned the property burned or not.

BURGLARY:

1. Elements: [28-507]

A person commits burglary if such person:

- a. Willfully, maliciously, and forcibly,
- b. Breaks and enters any real estate or any improvements erected thereon,
- c. With intent to commit any felony
- d. Or with intent to steal property of any value.

2. Classification:

Class III Felony

POSSESSION OF BURGLARS TOOLS:

1. Elements: [28-508]

It is unlawful to:

- a. Knowingly possess any explosive, tool, instrument, or other article,
- b. That is adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking,

- c. With the intent to use the explosive, tool, instrument, or article to commit such an offense,
- d. Or knowing that some person intends ultimately to use it to commit such an offense.

2. Classification:
Class IV Felony

CRIMINAL MISCHIEF:

1. Elements: [28-519]

A person commits criminal mischief if he or she:

- a. Damages property of another intentionally or recklessly; or
- b. Intentionally tampers with property of another so as to endanger person or property; or
- c. Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

2. Classification:

- a. Class III Misdemeanor
If there is no pecuniary loss, or such loss is less than \$200;
- b. Class II Misdemeanor
If the pecuniary loss is between \$200 and \$500;
- c. Class I Misdemeanor
If the pecuniary loss is between \$500 and \$1,500;
- d. Class IV Felony
For any pecuniary loss of \$1,500 or more, or if there is a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service.

DAMAGING PROPERTY OF A PUBLIC POWER SUPPLIER:

1. Elements: [70-2104]

It is unlawful for any person to:

- a. Willfully and maliciously:
- b. Damage, injure, or destroy,
- c. Or attempts to damage, injure, or destroy,

- d. Any machine, appliance, facility, or apparatus owned by a public power supplier used for generating electricity; or
- e. Any facility or electric wire owned by a public power supplier that is used for the purpose of conducting, transforming, transmitting, or distributing electricity or any pole, bracket, insulator, or other appliance or apparatus owned by a public power supplier that supports or carries any electric wire owned by a public power supplier.

1. Definition:

A ***public power supplier*** means a public power district, a municipality, , an electric cooperative, an electric membership association, a joint interlocal entity, a joint public agency, or any other governmental entity providing electric service

2. Classification:

Class IV Felony

***INTERUPTING ELECTRICITY OF A
PUBLIC POWER SUPPLIER:***

1. Elements: [70-2104]

It is unlawful for any perso to:

- a. Willfully and maliciously do any act,
- b. For the purpose of interrupting the generation, transmission, or distribution of electricity by a public power supplier.

2. Classification:

Class IV Felony

CRIMINAL TRESPASS FIRST DEGREE:

1. Elements: [28-520]

A person commits first-degree criminal trespass if he/she:

- a. Enters or secretly remains in any building or occupied structure or any separately secured or occupied portion thereof, knowing that he/she is not licensed or privileged to do so; OR

- b. Enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of an authorized person.

2. Definition:

A *public power infrastructure facility* means a power plant, an electrical station or substation, or any other facility which is used by a public power supplier as defined in section [70-2103] to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

3. Classification:

Class I Misdemeanor

- See Affirmative Defenses below.

CRIMINAL TRESPASS SECOND DEGREE:

1. Elements: [28-521]

A person commits second degree criminal trespass if,

- a. Knowing that he/she is not licensed or privileged to do so,
- b. Enters or remains in any place
- c. With notice against trespass that is given by:
 - (1) Actual communication to the actor; or
 - (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
 - (3) Fencing or other enclosure manifestly designed to exclude intruders (Except at a *public power infrastructure facility* – see 1st degree trespass).

2. Classification:

- Class III Misdemeanor, except as provided for in subsection (3) of this section.
- Class II Misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person.
- See Affirmative Defenses below.

TRESPASSING - AFFIRMATIVE DEFENSES: [28-522]

Any of the following may be an affirmative defense to prosecution for criminal trespass:

- A building or occupied structure involved in an offense under section [28- 520] was abandoned; or
- The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
- The actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him to enter or remain; or
- The actor was navigating a non-powered vessel on a stream or river and it was necessary to portage or otherwise transport the vessel around any fence or obstructions in such stream or river.

LITTERING:

1. Elements: [28-523]

It is unlawful to:

- a. Deposit, throw, discard, or otherwise dispose of,
- b. Any litter,
- c. On any public or private property, or in any waters.

2. Exceptions:

It is not littering if:

- a. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or
- b. The litter is placed in a receptacle or container installed on such property for such purpose.

3. Definitions:

- a. The word ***litter*** as used in this section means all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property.
 - Litter does not include wastes of primary processes of farming or manufacturing.

- b. **Waste material** as used in this subsection means material appearing in a place or in a context not associated with that material's function or origin.

4. Classification:

- Class III Misdemeanor for a first offense
- Class II Misdemeanor for a second offense
- Class I Misdemeanor for a third or subsequent offense

*NOTE: The *operator* of a motor vehicle or watercraft may be cited for any littering from the vehicle, regardless of who throws the litter.

UNAUTHORIZED APPLICATION OF GRAFFITI:

1. Elements: [28-524]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Apply graffiti of any type,
- c. Without the express permission of the owner or operator of the property:
 - (1) On any building, public or private, OR
 - (2) On any other tangible property owned by any person, firm, or corporation or any public entity or instrumentality.

2. Definition:

Graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or any other mark visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure.

- Graffiti is not advertising or any mark lawfully placed by an owner, tenant, or authorized agent for such owner or tenant.

3. Classification:

- Class III Misdemeanor for a first offense,
- Class IV Felony for a second or subsequent offense

4. Additional Sanctions:

In addition to the criminal penalty, the court may also order an offender to do any of the following:

- To clean up, repair, or replace the damaged property,
- To keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year,
- To pay restitution (payment can be combined with labor),
- To undergo counseling,
- Suspend defendant's motor vehicle operator's license for up to one year (applies to an adjudicated juvenile as well).

THEFT OFFENSES:

[28-509] to [28-518]

THEFT IS A SINGLE OFFENSE: [28-510]

Theft is a single offense that can be committed in multiple ways, as noted in the various offenses of [28-509 to 28-518].

- A person charged with theft under one section (such as theft by deception) can be found guilty of theft under a different section (such as theft by unlawful taking) based on the evidence at trial.

THEFT DEFINITIONS: [28-509]

- ***Deprive*** shall mean to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation;
- ***Property*** shall mean anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards (or similar instruments), choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power;

- **Property of another** shall mean property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband.

THEFT BY UNLAWFUL TAKING:

1. Elements: [28-511]

A person commits the crime of theft if he or she:

- Takes, or exercises control over, movable property of another with the intent to deprive him or her thereof; OR
- Transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.

2. Presumption:

It shall be presumed that failure to return leased or rented movable property (except a motor vehicle) is done with intent to deprive if the property is not returned within ten days after notice by certified mail of the expiration of a written lease or rental agreement.

3. Classification:

See [28-518] below.

THEFT OF A RENTED OR LEASED MOTOR VEHICLE:

1. Elements: [28-511(4)]

A person is guilty of theft if he or she:

- Rents or leases a motor vehicle,
- Under a written lease or rental agreement specifying the time and place for the return of the vehicle,
- And either:
 - (1) Fails to return the vehicle within seventy-two hours of written demand for return of the vehicle made upon

him or her by certified mail to the address given by him or her for such purpose, OR

- (2) Uses a fraudulent or stolen credit card to rent or lease a vehicle.

2. Exceptions:

This section does not apply to any person who:

- a. Unintentionally failed to return a rented motor vehicle or to inform the owner of the location of the vehicle through inadvertence, mistake, act of God, or other natural occurrence, OR
- b. Has had a rented motor vehicle stolen or otherwise converted from his or her possession and has filed the appropriate report with law enforcement authorities.

3. Classification:

See [28-518] below.

THEFT BY SHOPLIFTING: [28-511.01]

1 Elements:

It is unlawful for any person to:

- a. With the intent of appropriating merchandise to his/her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part,
- b. Does any of the following:
 - (1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
 - (2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
 - (3) Transfers the goods or merchandise of any store or retail establishment from one container to another;
 - (4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise;
 - (5) Causes a cash register or similar device to reflect less

than the retail price of the merchandise; or

- (6) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing any goods or merchandise of any store, including the use or possession of a security device countermeasure as defined in section [28-511.03], prior to purchase of the goods or merchandise.

2. Photographs as Evidence:

In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

- A description of the property;
- The name of the owner or owners of the property;
- The time, date, and location where the shoplift occurred;
- The time and date the photograph was taken;
- The name of the photographer; and
- Verification by the arresting officer.

3. Release of Shoplifted Property:

The use of photographs at trial is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

- Prior to releasing shoplifted property to the owner, there must be reasonable opportunity for the defendant's attorney to inspect and appraise the property, and possibly file a motion for retention of the it, which will be granted if there is any reasonable basis to believe that the photographs and affidavit may be misleading.

4. Classification:

See [28-518] below.

POSSESSION OF A SECURITY DEVICE COUNTERMEASURE:

1. Elements: [28-511.03]

- a. It is unlawful for any person,

- b. Other than an authorized agent of a store or retail establishment,
 - c. To possess, in that store,
 - d. Any security device countermeasure.
2. **Definitions:**
Security device countermeasure means a device that bypasses, disables, or removes an electronic or magnetic theft alarm sensor.
3. **Classification:**
Class II misdemeanor.

THEFT BY DECEPTION:

1. **Elements:** [28-512]
It is unlawful to:
- a. Intentionally obtain property of another,
 - b. By deception.
2. **Definition:**
Deception means intentionally doing any of the following:
- a. Creating or reinforcing a false impression:
 - Including false impressions as to law, value, intention, or other state of mind,
 - But deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - b. Preventing another from acquiring information that would affect his judgment of a transaction;
 - c. Failing to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
 - d. Using a credit card, charge plate, or any other instrument of payment, when:
 - (1) Such instrument has been stolen, forged, revoked, or canceled, or for any other reason its use by the actor is

- unauthorized, or
- (2) The actor does not have the intention and ability to meet all obligations to the issuer arising out of such use.

3. Exception:

The word *deceive* does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.

4. Classification:

See [28-518] below.

THEFT BY EXTORTION / THREATS:

1. Elements: [28-513]

A person commits theft if he obtains property of another by threatening to:

- a. Inflict bodily injury on anyone or commit any other criminal offense; or
- b. Accuse anyone of a criminal offense; or
- c. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- d. Take or withhold action as an official, or cause an official to take or withhold action; or
- e. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
- f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

2. Affirmative Defense:

It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) of this section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of

official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

3. **Classification:**
See [28-518] below.

THEFT OF LOST OR MISLAID PROPERTY:

1. **Elements:** [28-514]
It is unlawful for any person:
 - a. Who comes into control of property of another,
 - b. That he/she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient,
 - c. To fail to take reasonable measures to restore the property to a person entitled to have it,
 - d. With intent to deprive the owner thereof.
2. **Classification:**
 - The penalty for this section is the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section [28-518].
 - If the value of the property is two hundred dollars or less, the classification is a Class III Misdemeanor for the first conviction, a Class II Misdemeanor for the second conviction, and a Class I Misdemeanor for the third or subsequent conviction.

THEFT OF SERVICES:

1. **Elements:** [28-515]
A person commits theft if he/she:
 - a. Obtains services,
 - b. Knowing such services are available only for compensation,
 - c. By deception or threat or by false token or other means to

- avoid payment for the service,
- d. Or by diverting services to himself, herself, or another when not entitled to such services.

2. Definition:

Services include labor, professional service, telephone service, electric service, cable television service, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property.

- When compensation is ordinarily paid immediately upon the rendering of a service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

3. Classification:

See [28-518] below.

THEFT OF TELECOMMUNICATIONS SERVICE:

1. Elements: [28-515.01]

It is unlawful for any person to do any of the following:

- a. Knowingly make or possess any device designed to or commonly used to fraudulently obtain telecommunications service from a licensed cable television franchisee with the intent to use such device in the commission of an offense described in subsection (1) of section [28-515];
- b. Knowingly tamper with, interfere with, or connect to any cables, wires, converters, or other devices used for the distribution of telecommunications service by any mechanical, electrical, acoustical, or other means without authority from the operator of the service with the intent of obtaining telecommunications service fraudulently;
- c. Sell, give, transfer, or offer or advertise for sale a device which such person knows or should know is intended to be used for the purpose of fraudulently obtaining telecommunications service.

2. Definition:

- **Telecommunications Service** includes, but is not limited to, telephone service and cable television service;
- **Device** includes, but is not limited to, instrument, apparatus, equipment, and plans or instructions for making or assembling the instrument, apparatus, or equipment.

2. Classification: Class II Misdemeanor

THEFT OF UTILITY SERVICE:

1. Elements: [28-515.02]

It is unlawful for any person:

- a. To make any unauthorized connection of any instrument by or at which electricity, electric current, gas, or water may be consumed without passing through the meter made or provided for measuring or registering the amount or quantity thereof passing through it;
- b. To knowingly use or knowingly permit the use of electricity, electric current, gas, or water obtained unlawfully;
- c. To reconnect electrical, gas, or water service without the knowledge and consent of the supplier of such service if the service has been disconnected pursuant to sections [70-1601 to 70-1615]; or
- d. To willfully injure, alter, or in any manner interfere with or obstruct the action or operation of any meter made or provided for measuring or registering the amount or quantity of electricity, electric current, gas, or water passing through it without the knowledge and consent of the supplier.

2. Presumption:

Existence of any wire, pipe, or conduit connection/reconnection, or any injury, alteration, interference, or obstruction of a meter is prima facie evidence of the guilt of the person in possession of the premises where such connection, reconnection, injury,

alteration, interference, or obstruction exists.

- 3. Connection:**
Class III Misdemeanor

UNAUTHORIZED USE OF A PROPELLED VEHICLE:

- 1. Elements:** [28-516]

It is unlawful to:

- a. Intentionally exert unauthorized control,
- b. Over another's propelled vehicle,
- c. By operating it without the owner's consent.

- 2. Definition:**

Propelled vehicle means automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

- 3. Affirmative Defense:**

It is not a crime if the actor reasonably believed the owner would have authorized the use had he or she known of it.

- 4. Classification:**

- Class III Misdemeanor for the first offense
- Class I Misdemeanor for the second offense
- Class IV Felony for the third and any subsequent offenses

POSSESSION OF STOLEN PROPERTY:

- 1. Elements:** [28-517]

It is unlawful for any person to

- a. Receive, retain, or dispose of,
- b. Stolen movable property of another,
- c. Knowing or believing that it has been stolen,
- d. Unless the property is received, retained, or disposed of with intention to restore it to the owner.

- 3. Classification:**

See [28-518] below.

PENALTIES FOR THEFT: [28-518]

- 1. General Considerations:**

The penalty for most theft offenses depends on the value of the thing involved.

- Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.
- Value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

2. Theft Classifications:

- a. **\$200 or less:**
 - Class II Misdemeanor
 - Class I Misdemeanor for any second conviction
 - Class IV Felony for any third or subsequent conviction
- b. **\$200 to \$500:**
 - Class I Misdemeanor
 - Class IV Felony for a second/subsequent offense
- c. **\$500 to \$1,500:**
 - Class IV Felony
- d. **Over \$1,500:**
 - Class III Felony

FRAUD OFFENSES:

FORGERY FIRST DEGREE:

1. Elements: [28-602]

A person commits forgery in the first degree if he or she:

- a. Falsely makes, completes, endorses, alters, utters, or offers,
- b. A written instrument
- c. With intent to deceive or harm,
- d. Which is, purports to be, or which is calculated to become or to represent if completed:
 - (1) Part of an issue of money, stamps, securities, or other

valuable instruments issued by a government or governmental agency; or

- (2) Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property.

2. Classification:
Class III Felony

FORGERY SECOND DEGREE:

1. Elements: [28-603]

A person commits forgery in the second degree if he or she:

- a. Falsely makes, completes, endorses, alters, utters or offers,
- b. Any written instrument,
- c. To create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status,
- d. Or which purports to be, or is calculated to become or represent such a written instrument if completed,
- e. With intent to deceive or harm.

2. Classification:

- Class I Misdemeanor if the actual or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is \$300 or less;
- Class IV Felony if the actual or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument is between \$300 and \$1000;
- Class III Felony if the actual or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is \$1000 or more.
- Values or amounts may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a

sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT:

1. Elements: [28-604]

It is unlawful to:

- a. Possess any forged instrument covered in forgery first or second degree,
- b. With knowledge that it is forged,
- c. And with intent to deceive or harm.

2. Classification:

- Class II Misdemeanor for criminal possession of a forged instrument prohibited by section [28-603] if the amount or value of which is \$300 or less;
- Class I Misdemeanor for criminal possession of a forged instrument prohibited by section [28-603] if the amount or value of which is between \$300 and \$1000;
- Class IV Felony for criminal possession of a forged instrument prohibited by section [28-603] if the amount or value of which is \$1000 or more;
- Class IV Felony for criminal possession of any forged instrument prohibited by section [28-602];
- Amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

POSSESSION OF FORGERY DEVICE:

1. Elements: [28-605]

It is unlawful to:

- a. Makes or possesses with knowledge of its character any

- plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments; OR
- b. Make or possesses any device, apparatus, equipment, or article capable of or adaptable for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments, with intent to use it, or to aid or permit another to use it, for purposes of forgery; OR
- c. Illegally possesses a genuine plate, die, or other device used in the production of written instruments, with intent to deceive or harm.

2. Classification:
Class IV Felony

CRIMINAL SIMULATION:

1. Elements: [28-606]

A person commits a criminal simulation if he/she either:

- a. Makes, alters, or represents an object:
 - (1) In such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition Which it does not in fact have,
 - (2) With intent to deceive or harm, OR
- b. Utters, misrepresents, or possesses any object so simulated:
 - (1) With knowledge of its true character,
 - (2) And with intent to use to deceive or harm.

2. Classification:
Class III Misdemeanor

UNLAWFUL USE OF SLUGS:

1. Elements: [28-607]

It is unlawful to:

- a. Make, use, or utter a slug or slugs
- b. With intent to deprive a supplier of property or service sold or offered by means of a coin machine,

- c. Or with knowledge that he/she is facilitating such a deprivation by another person.
2. **Definitions:**
- **Slug** shall mean an object which by size, shape, or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token;
 - **Coin machine** shall mean a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a specified denomination or a token made for the purpose and in return for the insertion or deposit thereof to mechanically offer, provide, assist in providing or permit the acquisition of property or a public or private service; and
 - **Value** of the slug or slugs shall mean the value of the coins, bills, or tokens for which they are being substituted.
2. **Classification:**
- Class II Misdemeanor for making, using, or uttering of slugs with value of less than one hundred dollars.
 - Class I Misdemeanor for making, using, or uttering slugs with value of one hundred dollars or more.

CRIMINAL IMPERSONATION:

1. **Elements:** [28-638]

A person commits criminal impersonation if he or she:

- a. Pretends to be a representative of some person or organization and acts with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;
- b. Carries on any profession, business, occupation without a license, certificate, or other authorization required by law;
- c. Knowingly provides false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

- d. Knowingly provides false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

2. Classification:

- Class II Misdemeanor, as described in subdivisions (1)(a) and (1)(b) of this section if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars, or if none was gained or attempted to be gained. Any second conviction under this subdivision is a Class I Misdemeanor, and any third or subsequent conviction is a Class IV Felony.
- Class I Misdemeanor, as described in subdivisions (1)(a) and (1)(b) of this section, is a if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was between \$200 and \$500. Any second or subsequent conviction under this subdivision is a Class IV Felony.
- Class IV Felony, as described in subdivisions (1)(a) and (1)(b) of this section, if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was between \$500 and \$1,500. Any second or subsequent conviction is a Class III Felony.
- Class III Felony, as described in subdivisions (1)(a) and (1)(b) of this section, if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was more than \$1,500. Any second or subsequent conviction under this subdivision is a Class II Felony.
- Class IV Felony, as described in subdivision (1)(c) of this section. Any second conviction under this subdivision is a Class III Felony, and any third or subsequent conviction under this subdivision is a Class II Felony.
- Class II Misdemeanor, as described in subdivision (1)(d) of

this section. Any second or subsequent conviction under this subdivision is a Class I Misdemeanor.

- An offender may also be ordered to make restitution pursuant to sections [29-2280 to 29-2289].

*NOTE: No person shall be prosecuted for criminal impersonation unless the indictment is found or a complaint is filed within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

IDENTITY THEFT:

1. Elements: [28-639]

A person commits the crime of identity theft if he or she:

- a. Knowingly takes, purchases, manufactures, records, possesses, or uses
- b. Any personal identifying information or entity identifying information of another person or entity
- c. Without the consent of that other person or entity
- d. Or creates personal identifying information for a fictional person or entity,
- e. With the intent to :
 - (1) Obtain or use the other person's or entity's identity for any unlawful purpose
 - (2) OR to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense,
 - (3) OR to obtain or continue employment or with the intent to gain a pecuniary benefit for themselves, or another.

2. Exceptions:

The following are NOT Identity theft:

- a. The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;
- b. The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;
- c. The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or
- d. The investigative activities of law enforcement.

3. Classification:

- Identity theft is a Class III Felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more. Any second or subsequent conviction is a Class II Felony.
- Identity theft is a Class IV Felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was between \$500 and \$1,500. Any second or subsequent conviction is a Class III Felony.
- Identity theft is a Class I Misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was between \$200 and \$500. Any second or subsequent conviction is a Class IV Felony.
- Identity theft is a Class II Misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200 or if no such thing of value was gained or attempted to be gained. Any second conviction is a Class I Misdemeanor, and any third or subsequent conviction is a Class IV Felony.
- A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections [29-2280] to [29-2289].

*NOTE: No person shall be prosecuted for identity theft unless the indictment is found or a complaint is filed within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

IDENTITY FRAUD:

1. Elements: [28-640]

A person commits the crime of identity fraud if he or she either:

- a. Makes, counterfeits, alters, or mutilates any personal identification document:
 - (1) With the intent to deceive another, and
 - (2) Without lawful authority; or
- b. Willfully and knowingly:
 - (1) Obtains, possesses, uses, sells or furnishes a personal identification document,
 - (2) Or attempts to obtain, possess, or furnish to another person a personal identification document,
 - (3) For any purpose of deception.

(3) Classification:

- Identity fraud is a Class I Misdemeanor.
- Any second or subsequent conviction under this subdivision is a Class IV Felony.
- An offender may also be ordered to make restitution pursuant to sections [29-2280 to 29-2289].

*NOTE: A person cannot be prosecuted for identity fraud unless the indictment is found or a complaint is filed within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

IMPERSONATING A PUBLIC SERVANT:

1. Elements: [28-609]

A person unlawfully impersonates a public servant by:

- a. Falsely pretending to be a public servant,

- b. Other than a peace officer,
 - c. And performing any act in that pretended capacity.
- 2. Classification:**
Class III Misdemeanor
- It is not a defense that the office the actor pretended to hold did not in fact exist.

IMPERSONATING A POLICE OFFICER:

- 1. Elements:**
It is unlawful to falsely pretend to be a peace officer and perform any act in that pretended capacity.
- 2. Classification:**
- Class I Misdemeanor [28-610].
 - Class IV Felony if acting under color of the Motor Vehicle Operator's License Act [60-492].

ISSUING A BAD CHECK:

- 1. Elements:** [28-611]
A person commits the offense of issuing a bad check if he/she:
- a. Obtains property, services, or present value of any kind,
 - b. By issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money,
 - c. Knowing there are not sufficient funds in or credit with the drawee for the payment in full upon presentation.
- 2. Presumption:**
When the person has an account with the drawee, he or she shall be presumed to have known that he or she did not have sufficient funds or credit if,
- a. Within thirty days after issuance he/she was notified that the drawee refused payment for lack of funds and he/she failed to make it good within ten days after such notice; or
 - b. In the absence of refused-payment notice, he or she failed to make it good within ten days after notice was sent by the county attorney to his or her last-known address.

3. Classification:

- Class II Misdemeanor if the amount less than \$200.
- Class I Misdemeanor if the amount involved is between \$200 and \$500. (Class IV Felony for a 2nd offense);
- Class IV Felony for an amount between \$500 and \$1,500;
- Class III Felony if the amount is \$1,500 or more;
- An offender may also be ordered to make restitution,
- Class IV Felony for a 2nd misdemeanor offense.

ISSUING A NO-ACCOUNT CHECK:

1. Elements: [28-611.01]

It is unlawful for any person to:

- a. Issue or pass a check, draft, assignment of funds, or similar signed order for the payment of money,
- b. Knowing that he or she has no account with the drawee at that time.

2. Classification:

- A Class III Felony if the amount of the check, draft, assignment of funds, or order is \$1,500 or more;
- A Class IV Felony if the amount of the check, draft, assignment of funds, or order is between \$500 and \$1,500.
- A Class I Misdemeanor if the amount of the check, draft, assignment of funds, or order is between \$200 and \$500.
- A Class II Misdemeanor if the amount of the check, draft, assignment of funds, or order is less than \$200.
- For any second or subsequent offense under this section, any person so offending shall be guilty of a Class III Felony if the amount involved is \$500 or more; and a Class IV Felony if the amount involved is less than \$500.
- The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a 60 day period in one county may be used to determine the classification of the offense, but may not be aggregated into more than one offense.

ALTERED IDENTIFICATION NUMBERS:

1. Elements: [28-615 to 28-617]

It is unlawful to:

- a. Obscures an identification number,
- b. Or to sell or otherwise disposes of an article in the course of business, knowing that an identification number thereon is obscured,
- c. Or to buy or receive any article knowing that an identification number thereon is obscured, without first ascertaining that the person so selling or delivering it has a legal right to do so,
- d. With the intent to deceive or harm

2. Definitions:

- **Identification number** means a serial or motor number placed by a manufacturer upon an article as a permanent individual identifying mark;
- **Obscure** shall mean to destroy, remove, alter, conceal, or deface so as to render illegible by ordinary means of inspection; and
- **Article** shall mean any product made by a manufacturer and includes but is not limited to any appliance, radio, television, motor vehicle, tractor or other farm machinery.

2. Classification:

Class I Misdemeanor

INSURANCE FRAUD:

1. Elements: [28-631]

A person or entity commits a fraudulent insurance act by knowingly and with intent to defraud, does any of the following:

- a. Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy

knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

- b. Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;
- c. Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
- d. Knowingly and willfully transacts any contract, agreement, or instrument that violates this section;
- e. Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;
- f. Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;
- g. Issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- h. Possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- i. Makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance; or
- j. Removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of

insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

2. Classification:

- A violation of subdivisions (1)(a) through (f) of this section is a Class III Felony when the amount involved is one thousand five hundred dollars or more.
- A violation of subdivisions (1)(a) through (f) of this section is a Class IV Felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.
- A violation of subdivisions (1)(a) through (f) of this section is a Class I Misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.
- A violation of subdivisions (1)(a) through (f) of this section is a Class II Misdemeanor when the amount involved is less than two hundred dollars.
- For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV Felony.
- A violation of subdivisions (1)(g), (i), and (j) of this section is a Class IV Felony.
- A violation of subdivision (1)(h) of this section is a Class I Misdemeanor.

FINANCIAL TRANSACTION DEVICE VIOLATIONS:

[28-618] TO [28-630]

NOTE:

A complete list of all violations related to financial transactions is not within the scope of this handbook, but effort was made to include the most relevant ones.

DEFINITIONS:

- **Financial transaction device** means any instrument or device whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, debit card, electronic funds transfer card, or account number representing a financial account. Such device shall affect the financial interest, standing, or obligation of the financial account for services or financial payments for money, credit, property, or services;
- A **blank financial transaction** device shall mean a device that:
 - a. Has at least one or more, but not all, characteristics of a financial transaction device,
 - b. Including, but not limited to, a device which has not been embossed or magnetically encoded with the name of the account holder, personal identification code, expiration date, or other proprietary institutional information.

ISSUING A FALSE FINANCIAL STATEMENT:

1. Elements: [28-619]

It is unlawful to apply for a financial transaction device by:

- a. Knowingly making or causing to be made a material false statement regarding his or her name, occupation, financial condition, assets, or liabilities; OR
- b. Willfully and materially overvaluing any assets, OR
- c. Willfully omitting or materially undervaluing any indebtedness with the intent of influencing the issuer to issue a financial transaction device.

2. Classification:

- Class I Misdemeanor if the false statement was for the purposes of obtaining a financial transaction device, when such device is used to obtain money, property, or services.
- Class IV Felony if the false financial statement was made for purposes of obtaining two or more financial transaction devices, when such devices are used to obtain money, property, or services.

UNAUTHORIZED USE OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-620]

It is unlawful for any person to:

- a. Use a financial transaction device,
- b. In an automated banking device, to imprint a sales form, or in any other manner,
- c. For the purpose of obtaining money, credit, property, or services, or for making financial payment, with intent to defraud, OR
- d. With written notice that the financial transaction device is expired, revoked, or canceled; or is forged, altered, or counterfeited, OR
- e. When such use is unauthorized either by the issuer or by the account holder.

2. Classification:

The penalty classifications are based on total value of the money, credit, property, or services obtained or the financial payments made within a six-month period from the date of the first unauthorized use:

- Class II Misdemeanor if the total value is less than \$200
- Class I Misdemeanor if the total value is \$200 to \$500
- Class IV Felony if the total value is \$500 to \$1,500
- Class III Felony if the total value is \$1,500 or more

*NOTE: Prosecution of an offender can happen in any county the offense was committed, or any one of a series of offenses to be aggregated. Once aggregated and filed, no separate prosecution for an offense arising out of the same series of offenses aggregated and filed shall be allowed in any county.

CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-621]

It is unlawful for any person to:

- a. With the intent to defraud,
- b. Have in his or her possession or control,
- c. Any financial transaction device:
 - (1) Issued to a different account holder, or
 - (2) Which he or she knows or reasonably should know to be lost, stolen, forged, altered, or counterfeited.

2. Classification:

- Class III Misdemeanor for possession of one financial transaction device;
- Class IV Felony for two or three financial transaction devices, each issued to different account holders;
- Class III Felony for four or more financial transaction devices, each issued to different account holders.

CIRCULATION OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-622], [28-623]

It is unlawful for any person to:

- a. Sell or have in his or her possession control,
- b. Two or more financial transaction devices,
- c. Which he or she knows or reasonably should know,
- d. To be lost, stolen, forged, altered, counterfeited, or delivered under a mistaken identity or address of the account holder,
- e. With the intent to deliver, circulate, or sell such devices.

2. Classification:

- Class III Felony for two or more financial transaction devices (First Degree Circulation);
- Class IV Felony for a single financial transaction device (Second Degree Circulation).

POSSESSION OF A BLANK FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-624]

It is unlawful for any person to:

- a. Possess, control, or receive from another person,
- b. A blank financial transaction device,
- c. Without the authorization of the issuer or manufacturer,
- d. With intent to use or to cause the use of such device.

2. Classification:

- Class I Misdemeanor for possession of one blank device;
- Class IV Felony for possession of two or more devices.

SALE OF A BLANK FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-625]

It is unlawful for any person to:

- a. Possess, control, or receive from another person,
- b. A blank financial transaction device,
- c. Without the authorization of the issuer or manufacturer,
- d. With intent to deliver, circulate, sell, or to cause the same.

2. Classification:

- Class IV Felony for criminal sale of one blank financial transaction device;
- Class III Felony for criminal sale of two or more blank financial transaction devices.

POSSESSION OF A FORGERY DEVICE:

1. Elements: [28-626]

It is unlawful to possess any tool, photographic equipment, printing equipment, or other device or combination of devices:

- a. Adapted, designed, or commonly used,
- b. For the unauthorized manufacture, printing, embossing, or magnetic encoding of a financial transaction device,
- c. Or the altering or addition of any service mark or holographic image to a financial transaction device,

- d. With intent to use, or knowing that another intends to use.
2. **Classification:**
Class IV Felony

MANUFACTURE OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-627]

It is unlawful to do any of the following with the intent to defraud:

- a. Falsely make or manufacture a financial transaction device by printing, embossing, or magnetically encoding, OR
- b. Falsely alter or add service marks, optical characters, or holographic images to a device which is, purports to be, or is circulated to become or represent if completed a financial transaction device; OR
- c. Falsely complete a financial transaction device by adding to an incomplete device to make it appear to be complete.

2. Classification:

Class III Felony

FRAUDULENT COMPUTER CRIMES:

[28-1341 TO 28-1348]

GENERALLY:

The Computer Crimes Act recognizes that important personal, financial, medical, and historical data is stored in computers, and that valuable data stored can be lost due to criminal action.

- Specific criminal statutes exist to criminalize the intentional destruction of data or use of a computer to commit fraud.
- Other provisions of the criminal code may still apply to acts described in this act too.

UNAUTHORIZED ACCESS:

1. Elements: [28-1347]

It is unlawful for any person to:

- a. Intentionally accesses any computer or computer system, software, network, program, or data,
- b. Without authorization, and with knowledge that such access was not authorized,
- c. Or with authorization, knowingly and intentionally exceeding the limits of such authorization,

2. Classification:

- a. Class V Misdemeanor;
- b. Class II Misdemeanor for any second or subsequent offense.

PENETRATING A SECURITY SYSTEM:

1. Elements: [28-1343.01]

It is unlawful for any person to:

- a. Intentionally and without authority,
- b. Penetrates a computer security system.

2. Classification:

- a. Class II Misdemeanor if committed in a manner that compromises the security of data;
- b. Class I Misdemeanor if committed in a manner that creates a risk to public health and safety.
- c. Class IV Felony if committed in a manner that creates a grave risk of causing the death of a person.

OBTAINING OR DEPRIVING PROPERTY OR SERVICES USING A COMPUTER:

1. Elements: [28-1344]

It is unlawful for any person to:

- a. Intentionally access, or cause to be accessed,
- b. Directly or indirectly,
- c. Any computer or computer system, software, or network,
- d. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
- e. And obtain property or services of another or deprive

another of property or services.

2. Classification:

- a. Class IV Felony;
- b. Class III Felony if property/services has a value of \$1,500 or more.

HARMING OR DISRUPTING OPERATIONS:

1. Elements: [28-1345]

It is unlawful for any person to:

- a. Access or cause to be accessed,
- b. Any computer, computer system, computer software, or computer network,
- c. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
- d. Do any of the following:
 - (1) Alter, damage, delete, or destroy any computer, computer system, computer software, computer network, computer program, data, or other property;
 - (2) Disrupt the operation of any computer, computer system, computer software, or computer network; or
 - (3) Distribute a destructive computer program with intent to damage or destroy any computer, computer system, computer network, or computer software.

2. Classification:

- a. Class IV Felony;
- b. Class III Felony if the offender causes loss with a value of \$1,500 or more.

***OBTAINING CONFIDENTIAL PUBLIC INFORMATION
USING A COMPUTER:*** [28-1346]

1. Elements:

It is unlawful for any person to:

- a. Intentionally,
- b. Access or causes to be accessed,

- c. Any computer, computer system, computer software, or computer network,
 - d. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
 - e. Thereby obtaining information filed by the public with the state or any political subdivision which is by statute required to be kept confidential.
2. **Classification:**
- a. Class II Misdemeanor;
 - b. Class I Misdemeanor for any second or subsequent offense.

RACKETEERING OFFENSES

[28-1352 to 28-1356]

The *Public Protection Act* includes Nebraska's version of the federal Racketeering Influenced and Corrupt Organizations (RICO) statute to address organized criminal enterprises.

- The Act sets forth prohibited activities that mirror the federal provisions, making it illegal to use funds obtained from racketeering activities in the operation of any legal or illegal enterprise.
- Essentially, this Act is intended to address the money laundering of illegally obtained proceeds. The Public Protection Act further addresses loan sharking, strong-arm protection and other traditional organized crime activities.
- Nothing in the Act will supersede any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in the Act.

Definitions: [28-1354]

For purposes of the Public Protection Act:

- ***Enterprise*** means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a

- legal entity, and shall include illicit as well as licit enterprises as well as other entities;
- ***Pattern of racketeering activity*** means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;
 - ***Person*** means any individual or entity, as defined in section [21-2014], holding or capable of holding a legal, equitable, or beneficial interest in property;
 - ***Prosecutor*** includes the NE Attorney General of the State of Nebraska (and deputy and assistant AG), a County Attorney (or deputy), or any person designated to carry out the powers conferred by the act;
 - ***Racketeering Activity*** includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:
 - a. *Offenses Against The Person* which include: Murder in the first or second degree [28-303] or [28-304]; manslaughter 28-305; Assault in the first, second, or third degree under section [28-308], [28-309], or [28-310]; Terroristic Threats [28-311.01]; Kidnapping [28-313]; False imprisonment first or second degree [28-314] or [28-315]; Sexual Assault in the first degree [28-319]; and Robbery [28-324].
 - b. *Offenses Relating To Controlled Substances* which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section [28-416]; possession of marijuana weighing more

than one pound under subsection (12) of section [28-416]; possession of money used or intended to be used to facilitate a violation of subsection (1) of section [28-416] prohibited under subsection (17) of section [28-416]; any violation of section [28-418]; to unlawfully manufacture, distribute, deliver or possess with intent to distribute or deliver an imitation controlled substance under section [28-445]; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section [28-451]; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section [28-452].

- c. Offenses Against Property which include: Arson in the first [28-502], second [28-503], or third degree [28-504]; Burglary [28-507]; theft by unlawful taking [28-511]; theft by shoplifting [28-511.01]; theft by deception [28-512]; theft by extortion [28-513]; theft of services [28-515]; theft by receiving stolen property [28-517]; criminal mischief [28-519]; and unlawfully depriving or obtaining property or services using a computer [28-1344];
- d. Offenses Involving Fraud which include: Burning to Defraud [28-505]; Forgery in the first [28-602] or second [28-603] degree; criminal possession of a forged instrument [28-604]; criminal possession of forgery devices [28-605]; criminal impersonation [28-638]; Identity Theft [28-639]; Identity Fraud [28-640]; False Statement or Book Entry under section [28-612]; Tampering with a publicly exhibited contest [28-614]; Issuing a false financial statement to obtain a financial transaction device [28-619]; unauthorized use of a financial transaction device [28-620]; criminal possession of a financial transaction device [28-621]; unlawful circulation of a financial transaction device first degree [28-622]; unlawful circulation of a financial transaction device second degree under [28-623]; criminal

- possession of a blank financial transaction device [28-624]; criminal sale of a blank financial transaction device [28-625]; criminal possession of a forgery device [28-626]; unlawful manufacture of a financial transaction device [28-627]; laundering of sales forms under section [28-628]; unlawful acquisition of sales form processing services [28-629]; unlawful factoring of a financial transaction device under [28-630]; and fraudulent insurance acts [28-631];
- e. Offenses Involving Governmental Operations which include: Abuse of public records [28-911]; perjury or subornation of perjury [28-915]; bribery [28-917]; bribery of a witness [28-918]; tampering with a witness, informant or jury [28-919]; bribery of a juror [28-920]; assault on an officer in the first [28-929], second [28-930], or third degree [28-931]; assault on an officer using a motor vehicle [28-931.01];
 - f. Offenses Involving Gambling which include: Promoting gambling in the first degree [28-1102]; possession of gambling records [28-1105]; gambling debt collection [28-1105.01]; and possession of a gambling device [28-1107];
 - g. Offenses Relating To Firearms, Weapons, And Explosives which include: Carrying a concealed weapon [28-1202]; transportation or possession of machine guns, short rifles, or short shotguns [28-1203]; unlawful possession of a handgun [28-1204]; unlawful transfer of a firearm to a juvenile [28-1204.01]; using a deadly weapon to commit a felony [28-1205]; possession of a deadly weapon by a felon or a fugitive from justice [28-1206]; possession of a defaced firearm [28-1207]; defacing a firearm [28-1208]; unlawful discharge of a firearm [28-1212.02]; possession, receipt, retention, or disposition of a stolen firearm [28-1212.03]; unlawful possession of explosive materials in the first degree [28-1215]; unlawful possession of explosive materials in the second degree [28-1216]; unlawful sale of

explosives [28-1217]; use of explosives without a permit [28-1218]; obtaining an explosives permit through false representations [28-1219]; possession of a destructive device [28-1220]; threatening the use of explosives or placing a false bomb [28-1221]; using explosives to commit a felony [28-1222]; using explosives to damage or destroy property [28-1223]; and using explosives to kill or injure any person [28-1224];

- h. Any violation of the Securities Act [8-1117];
 - i. Any Violation of The Nebraska Revenue Act [77-2713];
 - j. Public Health And Morals Offenses, which include: Prostitution [28-801]; pandering [28-802]; keeping a place of prostitution [28-804]; human trafficking or forced labor or services [28-831]; a violation of section [28-1005]; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act [28-1463.01 to [28-1463.05];
 - k. A Violation Of The Computer Crimes Act [28-1341] et seq.
- **State** means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and
 - **Unlawful Debt** means a debt of at least one thousand five hundred dollars: (a) Incurred or contracted in gambling activity which was in violation of state or federal law or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or (b) Which was incurred in connection with the business of gambling in violation of state or federal law or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

USING RACKETEERING PROCEEDS:

1. Elements: 28-1355(1)]

It shall be unlawful for any person:

- a. To use or invest (directly or indirectly) any part of proceeds, or the proceeds derived from the investment or use thereof,
 - b. In the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise,
 - c. Knowing that the proceeds were derived (directly or indirectly),
 - d. From a pattern of racketeering activity or through collection of an unlawful debt.
2. **Classification:**
- Class III Felony
 - Class IB Felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB Felony.
 - In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.

ACQUIRING CONTROL VIA RACKETEERING:

1. **Elements:** [28-1355(2)]
- It shall be unlawful for any person:
- a. To acquire or maintain, directly or indirectly,
 - b. Any interest in or control of any enterprise or real property,
 - c. Or to conspire or attempt the same through a pattern of racketeering activity or collection of an unlawful debt.
2. **Classification:**
- Class III Felony
 - Class IB Felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB Felony.
 - In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.

PARTICIPATING IN RACKETEERING:

1. Elements: [28-1355(3)]

It is unlawful for any person:

- a. Who is employed by or associated with any enterprise,
- b. To conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs,
- c. Or to conspire or attempt to do the same,
- d. By a pattern of racketeering activity or collection of unlawful debt.

2. Classification:

- Class III Felony
- Class IB Felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB Felony
- In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.

*NOTE: It is not a violation of this section to purchase securities on the open market for purposes of investment, without the intention of controlling the issuer, if the securities of the issuer held by the purchaser, the members of his or her immediate family, and his or her or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

*NOTE: Unlawful Gambling Debt Collection [28-1105.01], remains a separate criminal offense. See the Gambling Offenses section of this handbook.

**UNLAWFUL MEMBERSHIP RECRUITMENT
INTO AN ORGANIZATION OR ASSOCIATION:**

1. Elements: [28-1351]

It is unlawful for a person to:

- a. Knowingly and intentionally,
- b. Coerce, intimidate, threaten, or inflict bodily harm upon another person,
- c. In order to entice that other person to join or prevent that other person from leaving,
- d. Any organization, group, enterprise, or association whose members (individually or collectively) engage in or have engaged in specified criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members.

2. Specified Criminal Acts:

Criminal acts that qualify under this section are any of the following:

- Robbery under section [28-324];
- Arson in the first, second, or third degree under section [28-502], [28-503], or [28-504], respectively;
- Burglary under section [28-507];
- Murder in the first degree, murder in the second degree, or manslaughter under section [28-303], [28-304], or [28-305], respectively;
- Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;
- Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections [28-1201] to [28-1212.04];
- Assault in the first degree or assault in the second degree under section [28-308] or [28-309], respectively

- Assault on an officer in the first, second, or third degree under section [28-929], [28-930], or [28-931], respectively,
- Assault on an officer using a motor vehicle under section [28-931.01];
- Theft by unlawful taking or disposition under section [28-511];
- Theft by receiving stolen property under section [28-517];
- Theft by deception under section [28-512];
- Theft by extortion under section [28-513];
- Kidnapping under section [28-313];
- Any forgery offense under sections 28-602 to [28-605];
- Criminal impersonation under section [28-608];
- Tampering with a publicly exhibited contest under section [28-614];
- Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section [28-620] or [28-621], respectively;
- Pandering under section [28-802];
- Bribery, bribery of a witness, or bribery of a juror under section [28-917], [28-918], or [28-920], respectively;
- Tampering with a witness or an informant or jury tampering under section [28-919];
- Unauthorized application of graffiti under [28-524];
- Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section [28-1005]; or
- Promoting gambling in the first degree under section [28-1102].

2. Classification:
Class IV Felony

FAMILY RELATIONS VIOLATIONS:

BIGAMY:

1. Elements: [28-701]

It is unlawful:

- a. For any married person whose husband or wife is alive to marry another person, OR
- b. For any unmarried person to knowingly marry a person who is already married.

2. Affirmative Defense:

An accused who is already married may show that it appeared at the time of a subsequent marriage:

- a. The accused reasonably believes that the prior spouse is dead; or
- b. The prior spouse had been continually absent for a period of five years during which the accused did not know the prior spouse to be alive; or
- c. The accused reasonably believed that he was legally eligible to remarry.

3. Classification:

Class I Misdemeanor

INCESTUOUS MARRIAGE:

1. Elements: [28-702]

Incestuous marriage does not create a criminal offense, but it is worth noting that such marriages lack any legal force or effect..

- Incestuous marriages are declared to be absolutely void.

2. Defined:

Incestuous marriages are marriages between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews.

INCEST:

1. Elements: [28-703]

It is unlawful for any person to:

- a. Knowingly intermarry, OR
- b. Engage in sexual penetration with a person who is within the degrees of consanguinity set forth in section [28-702], OR
- c. Engage in sexual penetration with his/her minor stepchild.

2. Classification:

Class III Felony

ABANDONMENT:

1. Elements: [28-705]

It is unlawful to:

- a. Abandon and neglect or refuse to maintain or provide for his/her spouse, child under sixteen years of age, or dependent stepchild,
- b. Whether such child is born in or out of wedlock.

2. Classification:

Class I Misdemeanor

- Abandonment for three consecutive months is prima facie evidence of intent under this section.
- Failure to provide assets to a *spouse* may be allowed for low-income allowance for medical care – see [68-922].

CRIMINAL NONSUPPORT:

1. Elements: [28-706]

It is unlawful for any person to intentionally:

- a. Fail, refuse, or neglect to provide proper support,
- b. To a spouse, minor child, minor stepchild, or dependent,
- c. Which he/she knows or reasonably should know he/she is legally obliged to provide,
- d. **Support** includes, but is not limited to, food, clothing, medical care, and shelter.

2. Exception:

- A parent/guardian who refuses to pay costs, medical costs of an abortion procedure performed on a minor child if not consulted prior to the abortion procedure or if not necessary to preserve the minor's life or health.
- Failure to provide assets to a *spouse* may be allowed for low-income allowance for medical care – see [68-922].

3. Classification:

- Class II Misdemeanor.
- Class IV Felony if nonsupport is a violation of a court order.

CONTRIBUTING TO THE DELINQUENCY OF A MINOR:

1. Elements: [28-709]

It is unlawful for any person to do any act,

- a. That encourages, causes, or contributes,
- b. To the delinquency or need for special supervision of a child under eighteen years of age,
- c. So that such child becomes, or will tend to become a delinquent child or a child in need of special supervision.

2. Definitions:

- ***Delinquent Child*** shall mean any child under the age of eighteen years who has violated any law of the state or any city or village ordinance;

(1) ***Child in Need of Special Supervision*** shall mean any child under the age of eighteen years who is any of the following:

- (1) Uncontrolled by his parent, guardian, or custodian by reason of being wayward or habitually disobedient; or
- (2) Habitually truant from school or home; or
- (3) A serious danger to the morals or health of themselves or others.

3. Classification:

Class I Misdemeanor

CHILD ABUSE AND NEGLECT:

[28-710 TO 28-727]

DEFINITIONS: [28-710]

- (1) ***Child abuse or neglect*** means:
 - a. Knowingly, intentionally, or negligently,
 - b. Causing or permitting a minor child,
 - c. To be in any of the following situations:
 - (1) Placed in a situation that endangers his or her life or physical or mental health;
 - (2) Cruelly confined or cruelly punished;
 - (3) Deprived of necessary food, clothing, shelter, or care;
 - (4) Left unattended in a motor vehicle if such minor child is six years of age or younger;
 - (5) Sexually abused; or
 - (6) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.
- (2) ***Negligently*** refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section [28-109], with respect to the safety or health of the minor child.
- (3) ***Recklessly*** means acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;
- (4) ***Serious Bodily Injury*** means bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or

impairment of the function of any part or organ of the body.

CHILD ABUSE:

1. Elements: [28-707]

A person commits child abuse if he/she:

- a. Knowingly, intentionally, or negligently,
- b. Causes or permits a minor child to be:
 - (1) Placed in a situation that endangers his or her life or physical or mental health; OR
 - (2) Cruelly confined or cruelly punished; OR
 - (3) Deprived of necessary food, clothing, shelter, or care; OR
 - (4) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; OR
 - (5) Placed in a situation to be sexually abused as a victim of 1st Degree Sexual Assault [28-319] or Sexual Assault of a Child 1st, 2nd, or 3rd Degree [28-319.01, 28-320.01]; OR
 - (6) Placed in a situation to be a trafficking victim as defined by [28-830].

***2013 Update**

2. Classification:

a. If Done Negligently:

- Class I Misdemeanor if abuse does not result in serious bodily injury or death;
- Class IIIA Felony if abuse does result in serious bodily injury;
- Class III Felony if abuse results in death.

b. If Done Knowingly and Intentionally:

- Class IIIA Felony if abuse does not result in serious bodily injury or death;
- Class II Felony if abuse results in serious bodily injury;
- Class IB Felony if abuse results in death.

*NOTE: The statutory privileges between patient/physician, client/counselor, and between husband/wife are not available for excluding or refusing testimony in a prosecution for child abuse.

REQUIRED REPORTING OF CHILD ABUSE: [28-711]

Any person who has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, must report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the Department of Health and Human Services.

- Required reporting includes any physician, medical institution, nurse, school employee, social worker, or other person.
- Report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report.
- Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the Department of Health and Human Services pursuant to section [28-718] on the next working day by telephone or mail.
- Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the Department of Health and Human Services.

LAW ENFORCEMENT DUTIES IN CHILD

ABUSE / NEGLECT CASES: [28-713]

Upon the receipt of a call reporting child abuse and neglect as required by section [28-711]:

- a. It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate.
- b. The law enforcement agency shall immediately notify the person or persons having custody each child victim of alleged out-of-home child abuse or neglect. Notification shall include the fact that a report has been made and information of the nature of the alleged child abuse or neglect.
- c. The law enforcement agency shall, by the next working day, notify either the hotline or the Department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the Department. The law enforcement agency may request assistance from the Department during the investigation.
- d. The Department may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;
- e. A copy of all reports relative to a case of suspected child abuse or neglect will be provided by the Department upon request from the law enforcement agency.

INVESTIGATIVE ASSISTANCE FROM THE NEBRASKA STATE PATROL: [81-2010.02]

The Nebraska State Patrol shall provide immediate responses to inquiries from local law enforcement in rural areas regarding proper investigatory procedures related to child abuse and neglect.

- All calls shall be referred to an NSP investigator.
- The investigator shall maintain and make available to local law

- enforcement a list of psychiatrists, psychologists, mental health practitioners, or other qualified professionals in the particular area where the incident occurred.
- The investigator must have completed training and be knowledgeable in:
 - (1) Screening child abuse and neglect calls;
 - (2) Interviewing alleged child abuse and neglect victims at the appropriate developmental level necessary;
 - (3) Family dynamics, including the ability to assess and handle child abuse and neglect and child sexual abuse cases
 - (4) Understanding the medical evidence and other physical evidence in child abuse and neglect and child sexual abuse cases and how to gather such evidence;
 - (5) How to prepare evidence for prosecution; and
 - (6) Evaluating the potential for false allegations

OFFENSES RELATING TO MORALS:

*NOTE: In all cases arising under sections [28-801 to 28-804], no person shall be excused from testifying based on a claim of self-incrimination. Such testimony, however, cannot be used against the person in criminal prosecution or otherwise unless given voluntarily.

PROSTITUTION:

****2013 Update***

1. Elements: [28-801]

A person commits prostitution by:

- a. Offering, or agreeing
- b. To perform any act of sexual contact or sexual penetration,
- c. With any person not his or her spouse,
- d. In exchange for money or other thing of value.

2. Affirmative Defense:

It is an affirmative defense that such person was a trafficking victim as defined in section [28-830]

3. Juvenile Offenders:

A suspected prostitute under age 18 shall be taken into temporary custody for disposition as a juvenile [43-248], but such juvenile is immune from prosecution for the crime of prostitution. Officers shall immediately report the allegations to DHHS for investigation.

4. Classification:

- a. Class II Misdemeanor if such person has had no prior convictions or has had one prior conviction.
- b. Class I Misdemeanor if such person has had two or more prior convictions.
- c. Any order of probation for prostitution must include a mental health and substance abuse assessment

SOLICITATION OF PROSTITUTION:

****2013 Update***

1. Elements: [28-801.01]

It is unlawful for any person to:

- a. Solicit another person who is not his or her spouse,
 - b. To perform any act of sexual contact or sexual penetration,
 - c. In exchange for money or other thing of value.
- 3. Affirmative Defense:** **2013 Update*
It is an affirmative defense to prosecution that the person was a trafficking victim under [28-830].
- 2. Classification:**
- a. Class I Misdemeanor for a first offense unless the person solicited is a juvenile.
 - The minimum fine is \$250,
 - Probation must include a minimum fine of \$250 with a mental health and substance abuse assessment.
 - b. Class IV Felony if the person solicited is under age 18 or the offender has had one or more prior convictions:
 - Minimum fine is five hundred dollars,
 - Any order of probation must include a minimum fine of five hundred dollars with a mental health and substance abuse assessment.

KEEPING A PLACE OF PROSTITUTION: **2013 Update*

- 1. Elements:** [28-804]
It is unlawful for any person:
- a. To knowingly grant or permit the use of any place that offers seclusion or shelter,
 - b. For the purpose and practice of prostitution.
- 2. Classification:**
- Class I Misdemeanor unless the prostitute was a juvenile,
 - Class IV Felony if the prostitute was under age 18.

PANDERING:

- 1. Elements:** [28-802]
A person commits pandering if such person if he/she:
- a. Entices another person to become a prostitute; OR

- b. Procures or harbors an inmate for a house of prostitution or any place where prostitution is practiced or allowed; OR
 - c. Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; OR
 - d. Receives, gives, or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into or leave Nebraska for the purpose of prostitution or debauchery.
2. **Classification:**
- Class IV Felony for a first offense;
 - Class III Felony if the victim is under age eighteen;
 - Class III Felony for a second or subsequent offense.

*NOTE: Marriage is not a defense, and Pandering is an exception to the husband-wife privilege of [27-505].

DEBAUCHING A MINOR:

1. **Elements:** [28-805]
It is unlawful to debauch or deprave the morals of any boy or girl

CONTINUED ON THE NEXT PAGE

under the age of seventeen years by:

- a. Lewdly inducing such boy or girl carnally to know any other person; OR
- b. Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; OR
- c. Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; OR
- d. Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.

2. Classification:

Class I Misdemeanor

PUBLIC INDECENCY: [28-806]

1. Elements:

It is unlawful for:

- a. A person, eighteen years of age or over,
- b. To perform or procure,
- c. Or assist any other person to perform,
- d. In a public place and where the conduct may reasonably be expected to be viewed by members of the public:
 - (1) An act of sexual penetration; or
 - (2) An exposure of the genitals of the body done with intent to affront or alarm any person; or
 - (3) A lewd fondling or caressing of the body of another person of the same or opposite sex.

2. Classification:

Class II Misdemeanor.

OBSCENITY AND
CHILD PORNOGRAPHY OFFENSES:

DEFINITIONS: [28-807 & 28-1463.02]

- ***Adult*** shall mean a person eighteen years of age or older;
- ***Child***, in the case of a participant, shall mean any person under the age of eighteen years and, in the case of a portrayed observer, shall mean any person under the age of sixteen years;
- ***Distribute*** shall mean to transfer possession, whether with or without consideration, by any means;
- ***Disseminate*** shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, with or without consideration, or agree to do the same;
- ***Erotic Fondling*** means touching a person's clothed or unclothed genitals or pubic area, breasts of a female, or developing breast area of a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved;
- ***Erotic Nudity*** shall mean the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;
- ***Harmful to Minors*** shall mean that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors,
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and
 - (c) Lacks serious literary, artistic, political, or scientific value

for minors;

- **Material or Work** shall mean any book, magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, nightclub, live performance, television production, other pictorial representation or electric reproduction, recording transcription, mechanical or otherwise, or other articles, equipment, machines, or materials;
- **Minor** shall mean an unmarried person age eighteen;
- **Nudity** means showing of post-pubertal male/female genitals, pubic area, or buttocks with less than a full opaque covering, the depiction of covered male genitals in a discernibly turgid state, or showing of a female breast with less than full opaque covering of any portion below the top of the nipple;
- **Obscene** means, and a jury will be instructed, that the factors in determining whether a work, material, conduct, or live exhibition is obscene are:
 - (a) The average person applying contemporary community standards would find the work as a whole goes substantially beyond contemporary limits of candor in description or presentation and predominantly appeals to the prurient, shameful, or morbid interest;
 - (b) The work depicts in a patently offensive way sexual conduct specifically referred to in [28-807] to [28- 829];
 - (c) The work as a whole lacks serious literary, artistic, political, or scientific value.
- **Person** means any individual, partnership, limited liability company, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;
- **Performance**, whether with or without consideration, means any play, motion picture, dance, or other exhibition performed before an audience;
- **Promote** means to manufacture, issue, sell, give, provide, lend,

mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising or to knowingly offer in person or through an agent or agree to do the same;

- ***Sexual conduct*** means acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person is female, breast;
- ***Sexual Excitement*** means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
- ***Sexually Explicit Conduct*** means:
 - a. Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital;
 - b. Real or simulated masturbation;
 - c. Real or simulated sadomasochistic abuse;
 - d. Erotic fondling;
 - e. Erotic nudity; or
 - f. Real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved;
- ***Sadomasochistic Abuse*** means flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest;
- ***Visual depiction*** means live performance or photographic representation, including undeveloped film or videotape or data stored on a computer disk or by other electronic means which is capable of conversion into a visual image and also includes any photograph, film, video, picture, digital image, or computer-displayed image, video, or picture, whether made or produced by electronic, mechanical, computer, digital, or other means.

SALE OR DELIVERY OF OBSCENE MATERIAL TO A MINOR:

1. Elements: [28-808]

It shall be unlawful for a person to knowingly:

- a. Sell, deliver, distribute, display for sale, or provide to a minor, OR
- b. Possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:
 - (1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly, pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; OR
 - (2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.

2. Classification:

Class I Misdemeanor

ADMISSION OF MINOR TO OBSCENE MOTION PICTURE SHOW OR PRESENTATION:

1. Elements: [28-809]

It shall be unlawful for any person to knowingly :

- a. Exhibit to a minor, OR
- b. Provide an admission ticket or pass to a minor, OR
- c. Admit a minor,

- d. To premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- 2. Classification:**
Class I Misdemeanor

OBSCENITY - FALSE REPRESENTATION OF AGE:

- 1. Elements:** [28-811(1)]
It shall be unlawful for any minor:
- a. To falsely represent their age as being eighteen years of age or older, with the intent to either:
 - (i) procure any materials set forth in section [28-808], or
 - (ii) procure admission to any motion picture, show, or other presentation as set forth in section [28-809].
- 2. Classification:**
Class II Misdemeanor

OBSCENITY - FALSE REPRESENTATIONS BY OTHERS:

- 1. Elements:** [28-811(2)]
It shall be unlawful for any person to:
- a. Knowingly make a false representation,
 - b. That he or she is the parent or guardian of any minor, or that a minor is eighteen years or older,
 - c. With the intent to procure any material set forth in section [28-808], Or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section [28-809].
- 2. Classification:**
Class II Misdemeanor

SALE OF OBSCENE MATERIAL - UNLAWFUL

EMPLOYMENT OF A MINOR:

1. Elements: [28-811(3)]

It shall be unlawful for

- a. Any person to hire as an employee,
- b. A minor whose duties it will be to assist in any manner
- c. The sale, delivery, distribution, or exhibition of material declared obscene by sections [28-807] to [28-829],
- d. Without consent by written affidavit from such minor's parent or legal guardian.

2. Classification:

Class II Misdemeanor

CREATING OBSCENE MATERIAL:

1. Elements: [28-813(1)]

It shall be unlawful for a person knowingly to:

- a. Print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, OR
- b. Publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, OR
- c. Have in his/her possession with intent to sell, rent, lend, transport, or distribute any obscene material, OR
- d. Promote any obscene material or performance.

2. Classification:

Class I Misdemeanor

ADVERTISING OBSCENE MATERIAL: [28-813(2)]

1. Elements:

It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material:

- a. That is represented or held out to be obscene,
- b. Whether or not such material exists in fact or is obscene.

2. Classification:

Class I Misdemeanor

PROMOTING OBSCENE MATERIAL: [28-813(3)]

1. Elements:

It is unlawful for any person to:

- a. Disseminate any obscene material,
- b. Produce, present, or direct an obscene performance, or
- c. Participate in that part of a performance that makes it obscene,
- d. For monetary consideration,
- e. Knowing the content and character of such material or performance.

2. Classification:

Class I Misdemeanor

*NOTE: The executive authority of Nebraska may demand extradition of such person from another state.

POSSESSION OF CHILD PORNOGRAPHY:

1. Elements: [28-813.01]

It shall be unlawful for a person to:

- a. Knowingly possess,
- b. Any visual depiction of *sexually explicit conduct* (defined in [28-1463.02]),
- c. Which has a child as one of its participants or portrayed observers.

2. Affirmative Defenses:

It is an affirmative defense to possessing child porn that either:

- a. The visual depiction portrays no person except the defendant; or
- b. All of the following are true:
 - The defendant was less than nineteen years of age;
 - The visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older;
 - The visual depiction was knowingly and voluntarily generated by the child depicted therein;

- The visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction;
- The visual depiction contains only one child;
- The defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and
- The defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

3. Classification:

- Class IV Felony for each offense by any person who is under nineteen years of age at the time he or she violates this section.
- Class III Felony for each offense by any person who is nineteen years of age or older at the time he or she violates this section.
- Class IC Felony for each offense by any person who violates this section and has previously been convicted of a violation of this section or section [28-308], [28-309], [28-310], [28-311], [28-313], [28-314], [28-315], [28-319], [28-319.01], [28-320.01], [28-833], [28-1463.03], or [28-1463.05] or subsection (1) or (2) of section [28-320].

*NOTE: Any commercial film/photo print processor who participates in an investigation or report of child pornography will be immune from any liability, civil or criminal, except for malicious statements.

OBSCENITY DEFENSES: [28-810] & [28-815]

It shall be a defense to a prosecution under sections [28-808], [28-809], and [28-813] that:

- a. Defendant had reasonable cause to believe that the minor was eighteen years of age or more (such as reliance on a draft card, driver's license, birth certificate, or other apparently official

- document);
- b. The minor was accompanied by his parent or guardian and defendant had reasonable cause to believe that was the case;
 - c. The activity consists of:
 - (1) Teaching or teaching materials in regularly established and recognized educational institutions, galleries or libraries, or
 - (2) The practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or
 - (3) Possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or
 - (4) Relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history, science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation;
 - d. Defendant has no financial interest in an activity, product, or event entitling such person to participate in the promotion, management, proceeds, or profits of the activity, product, or event, and such person's only connection with the activity, product, or event entitles such person to a reasonable salary or wages for services actually rendered; and
 - e. The sections regarding the exhibition or possession with the intent to exhibit an obscene film do not apply to a projectionist, usher, or ticket taker acting within the scope of employment, so long as that person has no financial interest in the place of employment.
 - Such person must testify regarding such employment in all judicial proceedings brought under sections [28-807] to [28-829] when granted immunity by the trial judge.

POSSESSION OF CHILD PORNOGRAPHY WITH INTENT:

1. Elements: [28-1463.05]

It shall be unlawful for a person to:

- a. Knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person,
- b. Any visual depiction of sexually explicit conduct
- d. Which has a child as a participant or portrayed observer.

2. Classification:

- Class IIIA Felony for each offense by an offender who is under nineteen years of age at the time of the violation.
- Class III Felony for each offense by an offender who is nineteen years of age or older at the time of the violation.
- Class IC Felony for each offense by an offender who has previously been convicted of a violation of this section, any violation of section [28-1463.03] or section [28-308], [28-309], [28-310], [28-311], [28-313], [28-314], [28-315], [28-319], [28-319.01], [28-320.01], [28-813], [28-833], or subsection (1) or (2) of section [28-320].

CREATING CHILD PORNOGRAPHY:

1. Elements: [28-1463.03(1)]

It shall be unlawful for a person to knowingly

- a. Make, publish, direct, create, provide, or in any manner generate,
- b. Any visual depiction of sexually explicit conduct,
- c. That has a child as a participant or portrayed observer.

2. Affirmative Defense:

It is an affirmative defense that the defendant was less than 18 years of age at the time and that the visual depiction of sexually explicit conduct includes no person other than the defendant.

3. Classification:

See Below

DISTRIBUTION OF CHILD PORNOGRAPHY:

1. Elements: [28-1463.03(2)]

It shall be unlawful for a person to:

- a. Knowingly purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person,
 - b. Any visual depiction of sexually explicit conduct,
 - c. Which has a child as one of its participants or portrayed observers.
2. **Affirmative Defense:**
It shall be an affirmative defense if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.
3. **Classification:**
See Below

***FORCING, INDUCING, OR AUTHORIZING A CHILD
TO ENGAGE IN PORNOGRAPHY:***

1. **Elements:** [28-1463.04(3)]
It shall be unlawful for a person to:
 - a. Knowingly employ, force, authorize, or induce,
 - b. Or otherwise cause a child to engage in any visual depiction of sexually explicit conduct,
 - c. Which has a child as one of its participants or portrayed observers.
2. **Classification:**
See Below

CONSENTING TO CHILD PORNOGRAPHY:

1. **Elements:** [28-1463.03(4)]
It shall be unlawful for a parent, stepparent, legal guardian, or any

person with custody and control of a child:

- a. To consent to such child engaging in any visual depiction of sexually explicit conduct,
- b. Which has a child as one of its participants or portrayed observers,
- c. Knowing the content thereof.

2. Classification:

See Below

PENALTIES FOR [28-14.63.03]: CHILD PORN VIOLATIONS:

- Class III Felony for any offense by an offender who is under nineteen years of age at the time of the violation.
 - Class ID Felony for any offense by an offender who is nineteen years of age or older at the time of the violation.
 - Class IC Felony for each offense by an offender who has previously been convicted of any violation of section [28-1463.03] or section [28-308], [28-309], [28-310], [28-311], [28-313], [28-314], [28-315], [28-319], [28-319.01], [28-320.01], [28-813], [28-833], or [28-1463.05] or subsection (1) or (2) of section [28-320].

**HUMAN TRAFFICKING AND
FORCED LABOR VIOLATIONS:**

DEFINITIONS: [28-830]

****2013 Update***

The following definitions apply to [28-830] and [28-832],:

- ***Actor*** means a person who solicits, procures, or supervises the services or labor of another person;
- ***Commercial sexual activity*** means any sex act on account of which anything of value is given, promised to, or received by any person;
- ***Financial Harm*** means theft by extortion as described by section 28-513;
- ***Forced Labor or Services*** means labor or services that are

performed or provided by another person and are obtained or maintained through:

- a. Inflicting or threatening to inflict serious personal injury to the other person as defined by section [28-318];
 - b. Physically Restraining or threatening to physically restrain the other person;
 - c. Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or
 - d. Causing or threatening to cause financial harm to the other person;
- **Labor** means work of economic or financial value;
 - **Maintain** means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the victim to perform such type of service;
 - **Minor** means a person younger than eighteen years of age;
 - **Obtain** means, in relation to labor or services, to secure performance thereof;
 - **Services** means an ongoing relationship between the actor and another person in which a person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually explicit performances are forms of services, but nothing here is meant to legalize prostitution;
 - **Sexually-Explicit Performance** means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and
 - **Trafficking Victim** means a person subjected to any act or acts prohibited by section [28-831].

FORCING OR ENTICING A MINOR INTO PORNOGRAPHY:

1. Elements: [28-831(2)]

No person shall knowingly:

- a. Recruit, entice, harbor, transport, provide, or obtain by any

- means, or attempt the same,
- b. A minor,
- c. For the purpose of having such minor engage in commercial sexual activity, sexually-explicit performance, or the production of pornography,
- d. Or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography.

2. Classification:

A person who violates this subsection shall be punished as follows:

- Class II Felony if PR uses overt force or the threat of force
- Class II Felony if PR did not use overt force or threat of force, but the victim is younger than fifteen years of age
- Class III Felony if PR did not use overt force or the threat of force, and the victim is between the ages of fifteen and eighteen years.

LABOR TRAFFICKING:

**2013 Update*

1. Elements: [28-830], [28-831]

Labor trafficking means to:

- a. Knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempting the same,
- b. A person eighteen years of age or older,
- c. Intending or knowing that the person will be subjected to either forced labor or services.

2. Classification:

- Class III Felony if done by inflicting or threatening to inflict serious personal injury to the other person as defined by section [28-318].
- Class III Felony if done by physically restraining or threatening to physically restrain the other person.

- Class IV Felony if done by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of the other person
- Class I Misdemeanor for causing or threatening to cause financial harm to the other person

LABOR TRAFFICKING OF A MINOR:

****2013 Update***

1. Elements: [28-830], [28-831]

Labor trafficking of a minor means to:

- Knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempting the same,
- A minor younger than eighteen years of age,
- Intending or knowing that the minor will be subjected to forced labor or services.

2. Classification:

- Class II Felony if the actor uses overt force or the threat of force against the trafficking victim;
- Class II Felony if trafficking victim has not attained the age of fifteen years;
- Class III Felony if the trafficking victim is between the ages of fifteen and eighteen, and the actor does not use overt force or threat of force against the trafficking victim;
- Class IV Felony for anyone who benefits, financially or by receiving anything of value, from participation in a venture that has, in part, an act that is in violation of this section.

SEX TRAFFICKING:

****2013 Update***

1. Elements: [28-830], [28-831]

Sex trafficking means to:

- Knowingly recruit, entice, harbor, transport, provide, obtain by any means, or attempt the same OR

- b. Cause or attempt to cause,
- c. A person eighteen years of age or older,
- d. To engage in any of the following:
 - (1) Commercial sexual activity, or
 - (2) Sexually explicit performance, or
 - (3) The production of pornography.

2. Classification:

- Class III Felony if done by inflicting or threatening to inflict serious personal injury to the other person as defined by section [28-318].
- Class III Felony if done by physically restraining or threatening to physically restrain the other person.
- Class IV Felony if done by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of the other person
- Class I Misdemeanor if done by causing or threatening to cause financial harm to the other person

SEX TRAFFICKING OF A MINOR:

**2013 Update*

1. Elements: [28-830], [28-831]

Sex Trafficking of a minor means to:

- a. Knowingly recruit, entice, harbor, transport, provide, obtain by any means, or attempt the same,
- b. Or cause or attempt to cause,
- c. A minor less than eighteen years of age,
- d. To engage in any of the following:
 - (1) Commercial sexual activity, or
 - (2) Sexually explicit performance, or
 - (3) The production of pornography.

2. Classification:

- Class II Felony if the actor uses overt force or the threat of force against the trafficking victim;
- Class II Felony if trafficking victim has not attained the age of fifteen years;
- Class III Felony if the trafficking victim is between the ages of fifteen and eighteen, and the actor does not use overt force or threat of force against the trafficking victim;
- Class IV Felony for anyone who benefits, financially or by receiving anything of value, from participation in a venture that has, is part, an act that is in violation of this section.

RECRUITING OR PROFITING FROM ADULT

FORCED LABOR:

1. Elements: [28-831(3)]

It is unlawful for any person to knowingly:

- Recruit, entice, harbor, transport, provide, obtain by any means, or attempt the same of a person eighteen years of age or older, intending or knowing that the person will be subjected to forced labor or services; OR
- Benefit financially or by receiving anything of value from participation in a venture that includes an act that is in violation of this section.

2. Classification:

Class IV Felony

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**OFFENSES INVOLVING THE INTEGRITY AND THE
EFFECTIVENESS OF GOVERNMENT OPERATION:**

OBSTRUCTING GOVERNMENT OPERATIONS:

1. Elements: [28-901]

It is unlawful for any person to:

- a. Intentionally obstruct, impair, or pervert,
- b. The administration of law or other governmental functions,
- c. By force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act.

2. Exceptions:

This section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or other means of avoiding compliance without affirmative interference with governmental functions.

3. Classification:

Class I Misdemeanor

***REQUIRED REPORTING OF INJURIES CAUSED BY
VIOLENCE:***

1. Elements: [28-905]

Everyone in the practice of medicine and surgery, or in charge of an emergency room or first-aid station shall report:

- a. Every case, in which he/she treats or is consulted for treatment,
- b. A wound or injury of violence,
- c. Which appears to have been received in connection with the commission of a criminal offense.

2. Reporting Requirements:

Reports are to be made immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs.

- Report must include the injured person's name, residence if ascertainable, and a brief description of the injury.
- Any law or rule of evidence regarding confidential communications is suspended for such reporting.

3. Classification:

Any person who fails to make the required report commits a Class III Misdemeanor.

REFUSING TO AID A PEACE OFFICER:

1. Elements: [28-903]

It is unlawful for a person to:

- a. Unreasonably refuse or fail to aid a peace officer,
- b. Upon request by a person known to him to be a peace officer,
- c. When such peace officer is:
 - (1) Apprehending any person charged with or convicted of any offense in Nebraska, OR
 - (2) Conveying such offender to the jail of the county.

2. Classification:

Class II Misdemeanor

RESISTING ARREST:

1. Elements: [28-904]

A person commits the offense of resisting arrest by:

- a. Intentionally preventing or attempting to prevent,
- b. A peace officer, acting under color of official authority,
- c. From effecting an arrest of the actor or another,
- d. By doing any of the following:
 - (1) Using or threatening physical force or violence against the peace officer or another; OR
 - (2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another; OR
 - (3) Employing means requiring substantial force to overcome resistance to effecting the arrest.

2. Affirmative Defense:

It is an affirmative defense to prosecution for resisting arrest that the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

3. Classification:

- Class I Misdemeanor for the first such offense.
- Class IIIA Felony for any second /subsequent such offense, or if resisting was done using a deadly or dangerous weapon.

FLEEING IN A MOTOR VEHICLE TO AVOID ARREST:

1. Elements: [28-905]

It is unlawful for the operator of any motor vehicle to:

- a. Flee in such vehicle,
- b. In an effort to avoid arrest or citation for any felony, misdemeanor, infraction, or traffic violation in Nebraska.

2. Classification:

- a. Class I Misdemeanor plus a revocation of the offender's driving privilege for up to one year.

- b. Class IV Felony and a two-year revocation of the offender's driving privilege if any of the following are true:
 - (1) The flight results in the death or injury of any person;
 - (2) The flight includes the willful reckless operation of a motor vehicle;
 - (3) It is the second or subsequent violation.

OBSTRUCTING A POLICE OFFICER:

1. Elements: [28-906]

It is unlawful for any person to:

- a. Use or threaten to use,
- b. Violence, force, physical interference, or obstacle,
- c. To intentionally obstruct, impair, or hinder:
 - (1) Enforcement of the law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority, or
 - (2) A police animal assisting a peace officer acting pursuant to the peace officer's official authority.

2. Classification:

Class I Misdemeanor

FALSE REPORTING:

1. Elements: [28-907]

A person commits the offense of false reporting if he/she:

- a. Furnishes material information to any peace officer or other official, knowing it to be false, with the intent to instigate or impede a criminal investigation;
- b. Furnishes information, knowing it to be false, alleging the need for emergency medical assistance service or an emergency in which human life or property are in jeopardy to any hospital;
- c. Furnishes or causes information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need

for assistance of a fire department or any personnel or equipment of such department;

- d. Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or
 - e. Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate or impede an investigation and which actually results in causing or impeding such investigation.
2. **Classification:**
- Class I Misdemeanor under (a) through (d);
 - False reporting pursuant to (e) is an Infraction.

INTERFERING WITH A FIREMAN:

1. **Elements:** [28-908]

A person commits the offense of interfering with a fireman if at any time and place where any firefighter is discharging or attempting to discharge any official duties, he/she willfully:

- a. Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
 - b. Disobeys the lawful orders given by any fireman while performing his duties; or
 - c. Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
 - d. Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, not to assist in extinguishing a fire.
2. **Definition:**
- Fireman*** shall mean any person who is an officer, employee, or member of a fire department or fire-protection or firefighting agency of the federal government, the State of Nebraska, a city, county, city and county, district, or other public or municipal

corporation or political subdivision of the state.

- This law applies to either paid or volunteer firefighters.

3. Classification:

Class I Misdemeanor

ABUSE OF PUBLIC RECORDS:

1. Elements: [28-911]

A person commits abuse of public records, if he/she:

- a. Knowingly makes a false entry in or falsely alters any public record; or
- b. Knowingly lacking authority to do so, he/she intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or
- c. Knowingly lacking authority to retain the record, he/she refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or
- d. Makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.

2. Classification:

Class II Misdemeanor

*NOTE: A **public record** under this section includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

ESCAPE:

1. Elements: [28-912]

A person commits escape by unlawfully:

- a. Removing themselves from official detention, OR
- b. Failing to return to official detention following temporary leave granted for a specific purpose or limited period.

2. Definition:

The term ***Official detention*** means arrest, detention in or transportation to any facility for custody of persons under charge or conviction of crime or contempt or for persons alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes.

- Official detention is not supervision of probation or parole or constraint incidental to release on bail.

3. Classification:

- Class IV Felony;
- Class III Felony if:
 - (1) The detainee was under arrest or detained for a felony or following conviction; or
 - (2) The detainee uses force, threat, deadly weapon, or other dangerous instrumentality to effect escape; or
 - (3) A public servant concerned in detention of persons purposely facilitates or permits an escape from a detention facility or from transportation thereto.

PERMITTING ESCAPE:

1. Elements: [28-912]

It is unlawful for:

- a. A public servant concerned in detention,
- b. To knowingly permit an escape.

2. Classification:

Class IV Felony

JUVENILE ESCAPE:

1. Elements: [28-912.01]

It is unlawful for any person to:

- a. Entice or attempt to entice a juvenile away from a facility or program when the juvenile has been legally placed with or committed to the Office of Juvenile Services; OR
- b. To knowingly harbor, transport, conceal, or aid the same, for any juvenile who has escaped from the custody of the

2. Classification:
Class IV Felony

PROVIDING AN INMATE WITH IMPLEMENTS FOR ESCAPE:

1. Elements: [28-913]

It is unlawful for any person to

- a. Unlawfully provide an inmate with or introduce within a detention facility,
- b. Any weapon, tool, or other thing that may be useful for escape.

2. Classification:

Class I Misdemeanor

*NOTE: *Unlawfully* means surreptitiously or contrary to law, regulation, or order of the detaining authority.

INMATE POSSESSION OF IMPLEMENTS FOR ESCAPE:

1. Elements: [28-913]

An inmate commits this offense if he/she:

- a. Unlawfully procures, makes, or otherwise provides themselves with,
- b. Or has in his/her possession,
- c. Any such implement of escape.

2. Classification:

Class I Misdemeanor.

*NOTE: *Unlawfully* means surreptitiously or contrary to law, regulation, or order of the detaining authority.

LOITERING ABOUT A PENAL INSTITUTION:

1. Elements: [28-914]

It is unlawful for any person to:

- a. Loiter about a penal institution in Nebraska,

- b. And engage in unauthorized conversation with an inmate,
 - c. Or pass any unauthorized message to an inmate,
 - d. Or fail or refuse to leave the immediate vicinity of the penal institution when ordered to do so by a peace officer or correctional official.
2. **Classification:**
Class III Misdemeanor

*NOTE: A *penal institution* includes a jail, prison, penitentiary, house of correction, or other place of penal detention.

PERJURY:

1. **Elements:** [28-915(1)]
It is unlawful for any person:
- a. In any official proceeding,
 - b. To make a false statement under oath or affirmation,
 - c. Or swear/affirm the truth of a statement previously made,
 - d. When the statement is material and he or she does not believe it to be true.
2. **Definition:**
A falsification shall be *material* if it could have affected the course or outcome of the proceeding, regardless of the admissibility of the statement under the rules of evidence.
- It is not a defense that the declarant mistakenly believed the falsification to be immaterial.
 - Whether a falsification is material in a given factual situation shall be a question of law.
 - For non-material false statements see false statements under oath below.
3. **Exception:**
A material false statement is not perjury if retracted in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

4. Classification:
Class III Felony

*NOTE: No person shall be convicted of perjury when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

SUBORNATION OF PERJURY:

- 1. Elements:** [28-915(2)]
It is unlawful for any person:
 - a. To persuade, procure, or suborn,
 - b. Any other person to commit perjury.
- 2. Classification:**
Class III Felony

FALSE STATEMENT UNDER OATH:

- 1. Elements:** [28-915.01]
It is unlawful for any person to:
 - a. Make a false statement,
 - b. Under oath or equivalent affirmation,
 - c. Or swear/affirm the truth of the statement previously made,
 - d. When he/she does not believe the statement to be true.
- 2. Exceptions:**
 - A false statement may be retracted within the proceedings if done before it was apparent and before it affected the proceedings.
 - This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.
 - A false statement cannot be proven solely by the testimony of one other person of its falsehood.
- 2. Classification:**
 - Class I misdemeanor if the falsification occurs in an official

proceeding, or is intended to mislead a public servant in performing his or her official function;

- Class II misdemeanor if the statement is required by law to be sworn/affirmed to a notary or other authorized person.

*NOTE: No person shall be convicted of making a false statement when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

BRIBERY:

1. Elements: [28-917]

A person commits bribery if he/she:

- a. Offers, confers, or agrees to confer
- b. Any benefit upon a public servant or peace officer
- c. With the intent to influence that public servant or peace officer to violate his public duty or oath of office,
- d. Thereby influencing the public servant or peace officer's vote, opinion, judgment, exercise of discretion, or other action or inaction in his/her official capacity.

2. Classification:

Class IV Felony

ACCEPTING A BRIBE:

1. Elements: [28-917]

It is unlawful for any public servant or peace officer:

- a. Who is solicited with a bribe,
- d. To accept, or agree to accept any benefit
- e. Upon an agreement or understanding to violate a public duty or oath of office,
- f. By changing or amending an official vote, opinion, judgment, exercise of discretion, or other action or inaction.

2. Classification:

Class IV Felony

*NOTE: It is not a defense that the person sought to be influenced was not qualified to act in the desired way.

COMPOUNDING A FELONY:

1. Elements: [28-301]

It is unlawful to:

- a. Accept or agree to accept any pecuniary benefit or other reward or promise,
- b. As consideration for refraining from either:
 - (1) Seeking prosecution of an offender; or
 - (2) Reporting the commission of any felony or information relating to a felony to law enforcement.

2. Classification:

- Class I Misdemeanor.
- It is an affirmative defense that the benefit received did not exceed an amount that the defendant reasonably believed to be due as restitution for harm caused by the crime.

GIFTS TO PUBLIC OFFICIALS (*Misdemeanor Bribery*):

1. Elements: [49-14,101]

It is unlawful for any person to offer or give anything of value:

- a. To a public (elected) official, public employee, candidate, to a member of the immediate family of such persons, or a business with which such individual is associated,
- b. Or for such a person, family member,
- c.
- d.
- e. r, or business to solicit or accept anything of value,
- f. Including a gift, loan, contribution, reward, or promise of future employment,
- g. Based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby.

2. Classification:

Class III Misdemeanor

- No vote by any member of the Legislature shall subject such member to a criminal sanction under this section.

BRIBERY OF A WITNESS:

1. Elements: [28-918]

A person commits bribery of a witness if he/she:

- a. Offers, confers, or agrees to confer any benefit,
- b. Upon a witness or a person he/she believes is about to be called as a witness in any official proceeding,
- c. With intent to:
 - (1) Influence the witness to testify falsely or unlawfully withhold any testimony; or
 - (2) Induce the witness to avoid legal process summoning that person to testify; or
 - (3) Induce the witness to be absent from an official proceeding to which they have been legally summoned.

2. Classification:

Class IV Felony

ACCEPTING A WITNESS BRIBE:

1. Elements: [28-918]

It is unlawful for a witness or one who has been called as a witness in any official proceeding:

- a. To accept or agree to accept any benefit,
- b. For any of the purposes that made the bribe itself illegal.

2. Classification:

Class IV Felony

TAMPERING WITH A WITNESS, INFORMANT, OR JUROR:

1. Elements: [28-919]

It is unlawful for any person to:

- a. Believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted,
- b. Attempt to induce or cause a witness or informant to:
 - (1) Testify or inform falsely; or
 - (2) Withhold any testimony, information, document, or thing; or
 - (3) Elude legal process summoning him or her to testify or supply evidence; or
 - (4) Be absent from any proceeding or investigation to which he or she has been legally summoned.

2. Classification:

Class IV Felony

JURY TAMPERING:

1. Elements: [28-919]

It is unlawful for any person to:

- a. Attempt, directly or indirectly, to communicate with a juror,
- b. With intent to influence a juror's vote, opinion, decision, or other action in a case,
- c. Other than as a part of the proceedings in the trial of the case.

2. Classification:

Class IV Felony

BRIBERY OF A JUROR:

1. Elements: [28-920]

It is unlawful for any person to:

- a. Offer, confer, or agree to confer any benefit upon a juror,
- b. With the intent to influence the juror's vote, opinion, decision, or other action as a juror.

2. **Classification:**
Class IV Felony

ACCEPTING A JUROR BRIBE:

1. **Elements:** [28-920]
It is unlawful for any person to:
 - a. Accept or agree to accept any benefit from another person,
 - b. For the purpose of influencing his vote, opinion, decision, or other action as a juror.
2. **Classification:**
Class IV Felony

TAMPERING WITH PHYSICAL EVIDENCE:

1. **Elements:** [28-922]
It is unlawful for any person:
 - a. Believing that an official proceeding is pending or about to be instituted,
 - b. And acting without legal right or authority, to either:
 - (1) Destroy, mutilate, conceal, remove, or alter physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; OR
 - (2) Knowingly make, present, or offer any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.
2. **Definition:**
The term ***Physical Evidence*** means any article, object, document, record, or other thing of physical substance.
3. **Classification:**
Class IV Felony

SIMULATING LEGAL PROCESS:

1. **Elements:** [28-923]
It is unlawful for any person to:

- a. Send, deliver, or mail any paper or document, or in any manner cause the same,
 - b. Simulating or intended to simulate,
 - c. A summons, complaint, writ, or any other court process,
 - d. To any person, firm, company, or corporation,
 - e. For the purpose and intent of forcing payment of any alleged claim, debt, or legal obligation.
- 2. Classification:**
Class III Misdemeanor

OFFICIAL MISCONDUCT BY A PUBLIC SERVANT:

- 1. Elements:** [28-924]
It is unlawful for a public servant to:
- a. Knowingly violate any statute or lawfully adopted rule or regulation,
 - b. Relating to his/her official duties.
- 2. Classification:**
Class II Misdemeanor

MISUSE OF OFFICIAL INFORMATION BY A PUBLIC SERVANT:

- 1. Elements:** [28-925]
It is unlawful for any public servant to do any of the following in contemplation of official action, or in reliance on non-public information accessed in an official capacity:
- a. Acquire a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
 - b. Speculate or wager on the basis of such information or official action; or
 - c. Aid, advise, or encourage another to do the same with intent to confer on any person a special pecuniary benefit.
- 2. Classification:**
Class III Misdemeanor

OPPRESSION UNDER COLOR OF OFFICE:

1. Elements: [28-926]

It is unlawful for any public servant or peace officer to:

- a. Designedly, willfully, or corruptly,
- b. Injure, deceive, harm, or oppress any person,
- c. Or attempt the same,
- d. By color of or in the execution of his/her office.

2. Classification:

- The offender is also answerable to the party so injured, deceived, or harmed or oppressed in treble damages.

NEGLECTING TO SERVE A WARRANT:

1. Elements: [28-927]

It is unlawful for any sheriff or other officer to:

- a. Neglect or delay to immediately serve any warrant legally issued by any Nebraska judge in any criminal case,
- c. When it is in his or her power to serve the same, either alone or by calling upon assistance according to law.

2. Classification:

- Class II Misdemeanor if the offense charged for which the warrant was issued is a felony.
- Class III Misdemeanor if the offense charged for which the warrant was issued is a misdemeanor.

*NOTE: Any sheriff or other officer who is convicted under this section shall immediately forfeit his or her office.

ASSAULT ON AN OFFICER FIRST DEGREE:

1. Elements: [28-929]

A person commits an assault on an officer in the first degree by:

- a. Intentionally or knowingly causing *serious bodily injury*,
- b. To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or
- c. To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act,
- d. While such officer or employee is engaged in the performance of his or her official duties.

2. Classification:

Class ID Felony

ASSAULT ON AN OFFICER SECOND DEGREE:

1. Elements: [28-930]

A person commits assault on an officer in the second degree by:

- a. Intentionally or knowingly or recklessly causing *bodily injury with a dangerous instrument*,
- b. To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or
- c. To an employee of the DHHS if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act,
- d. While such officer or employee is engaged in the performance of his or her official duties.

2. Classification:

Class II Felony

ASSAULT ON AN OFFICER THIRD DEGREE:

1 Elements: [28-931]

- A person commits assault on an officer in the third degree by:
- a. Intentionally, knowingly, or recklessly causing *bodily injury*,
 - b. To a peace officer, a probation officer, or an employee of the Department of Correctional Services, or
 - c. To an employee of the DHHS if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act,
 - d. While such officer or employee is engaged in the performance of his or her official duties.
2. **Classification:**
Class IIIA Felony

**ASSAULT ON AN A PROBATION OFFICER
OR CORRECTIONS EMPLOYEE:**

1. **Elements:** [28-929] to [28-931]
It is unlawful for any person to
- a. Assault any of the following persons:
 - (1) A probation officer, or
 - (2) An employee of the Dept of Correctional Services; or
 - (3) An employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act,
 - b. While such person is engaged in the performance of official duties.
2. **Classification:**
- Class ID Felony if done intentionally or knowingly causing *serious bodily injury* (1st Degree);
 - Class II Felony if done intentionally, knowingly or recklessly causing *bodily injury with a dangerous instrument* (2nd Degree);
 - Class IIIA Felony if done intentionally, knowingly, or recklessly causing *bodily injury* (3rd Degree).

**ASSAULT ON A PEACE OFFICER, PROBATION OFFICER,
OR CORRECTIONS EMPLOYEE WITH A MOTOR VEHICLE:**

1. Elements: [28-931.01]

A person commits this offense by:

- a. Intentionally and knowingly causes bodily injury,
- b. By using a motor vehicle to run over or to strike,
- c. A peace officer, a probation officer, or an employee of the Department of Correctional Services,
- d. Or an employee of the DHHS if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act,
- e. While such officer or employee is engaged in the performance of his or her duties,
- f. Or by using a motor vehicle to collide with an officer's or employee's motor vehicle.

2. Classification:

Class IIIA Felony.

ASSAULT ON A HEALTH CARE PROFESSIONAL:

3. Elements: [28-929] to [28-931] ***2012 Update***

It is unlawful for any person to:

- a. Assault a Health Care Professional,
- b. While the victim is on duty at a hospital or a health clinic.

4. Definition:

- *Health care professional* means a physician or other health care practitioner who is licensed, certified, or registered to perform specified health services consistent with state law who practices at a hospital or a health clinic;

5. Classification:

- Class ID Felony if done intentionally or knowingly causing *serious bodily injury* (1st Degree);
- Class II Felony if done intentionally, knowingly or recklessly causing *bodily injury with a dangerous instrument* (2nd Degree);
- Class IIIA Felony if done intentionally, knowingly, or recklessly causing *bodily injury* (3rd Degree).

ASSAULT ON A PUBLIC SAFETY OFFICER

WITH A BODILY FLUID:

1. Elements: [28-934]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Strike any public safety officer,
- c. With any bodily fluid.

2. Definitions:

- *Bodily fluid* means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and
- *Public safety officer* includes any of the following persons

who are engaged in the performance of their official duties at the time of the offense:

- (1) A peace officer;
- (2) A probation officer;
- (3) An employee of a county, city, or village jail;
- (4) An employee of the Department of Correctional Services;
- (5) An employee of the secure youth confinement facility operated by the Department of Correctional Services, if the offender is committed to such facility;
- (6) An employee of the Youth Rehabilitation and Treatment Center at Geneva or Kearney; or
- (7) An employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

3. *Court Order to Obtain Evidence:*

Upon a showing of probable cause by affidavit that an offense has been committed and that identifies the probable source of the bodily fluid(s) used to commit the offense, a judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis of the bodily fluid(s) used.

4. *Classification:*

- Class I Misdemeanor,
- Class IIIA Felony if the offender strikes the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

***NOTE:** The bodily fluid used in the commission of this crime need not have come from the offender's own body.

ASSAULT BY A CONFINED PERSON:

1. Elements: [28-932]

It is unlawful for:

- a. Any person who is legally confined in a jail or correctional or penal institution,
- b. To intentionally, knowingly, or recklessly,
- c. Cause bodily injury to another person.

2. Classification:

- Class IIIA Felony;
- Class III Felony if a deadly or dangerous weapon is used to commit such assault

**COMPELLING OR INDUCING AN ACT OF ANOTHER
BY A CONFINED PERSON:**

1. Elements: [28-933]

It is unlawful for:

- a. Any person who is legally confined in a jail or correctional or penal institution,
- b. To commit any of the following crimes against any person:
 - (1) Assault 1st, 2nd, or 3rd degree [28-308] to [28-310],
 - (2) Terroristic threats [28-311.01],
 - (3) Kidnapping [28-313], or
 - (4) False imprisonment 1st [28-314], or 2nd [28-315] degree.
- c. For the purpose of compelling or inducing the performance of any act by such person or any other person.

2. Classification:

Class II Felony

WEAPON AND FIREARM VIOLATIONS:

DEFINITIONS: [28-1201]

For [28-1201] to [28-1212], unless the context otherwise requires:

- **Firearm** means any weapon which is designed to or may

readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

- ***Fugitive From Justice*** means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;
- ***Handgun*** means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;
- ***Juvenile*** means any person under the age of eighteen years;
- ***Knife*** means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;
- ***Knuckles*** and ***Brass or Iron Knuckles*** means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;
- ***Machine Gun*** means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;
- ***School*** means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section [85-1603], a community college, a public or private college, a junior college, or a university;
- ***Short Rifle*** means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and
- ***Short Shotgun*** means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

FIRARMS FOUND IN MOTOR VEHICLES: [28-1212].

Unless the firearm is found on the person of one of the occupants, *all* occupants of a motor vehicle are deemed to carry and be in possession of a firearm found in a motor vehicle for purposes of prosecution under [28-1203], [28-1206], [28-1207], or [28-1212.03].

CARRYING CONCEALED WEAPONS:

1. Elements: [28-1202]

A person commits this offense if he/she:

- a. Carries a deadly weapon or weapons,
- b. Concealed on or about his or her person,
- c. Such as a handgun, knife, brass or iron knuckles, or any other deadly weapon.

2. Affirmative Defense:

It is an affirmative defense that:

- a. The defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons,
- b. AND, the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

3. Exception:

This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun.

4. Classification:

- Class I misdemeanor
- Class IV Felony for a second or subsequent conviction

*NOTE: A *deadly weapon* may be an object or weapon not specifically named, as determined by the trier of fact (judge of jury), based on evidence of the use or intended use of it.

POSSESSING OR TRANSPORTING PROHIBITED WEAPONS:

1. Elements: [28-1203]

It is unlawful for any person or person:

- a. To possess or transport,
- b. Any machine gun, short rifle, or short shotgun.

2. Exceptions:

- The Lawful discharge of duty by peace officers, members of the United States military or Nebraska National Guard,
- Persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

3. Classification:

Class IV Felony

POSSESSION OF A HANDGUN BY A MINOR:

1. Elements: [28-1204]

It is unlawful for:

- a. Any person under the age of eighteen years,
- b. To possess a handgun.

2. Exceptions:

This section does not apply to:

- The issuance of such handguns to members of the armed forces of the United States, active or reserve, Nebraska National Guard, or Reserve Officers Training Corps, when on duty or training;
- The temporary loan of handguns for instruction under the immediate supervision of a parent or guardian or adult instructor.

2. Classification:

Class I Misdemeanor

- The law enforcement officer shall confiscate such firearm to be held by the agency employing such officer until it no longer is required as evidence.

TRANSFERRING A FIREARM TO A JUVENILE:

1. Elements: [28-1204.01]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Sell, provide, loan, deliver, or in any other way transfer possession, of a firearm to a juvenile,
- c. Or attempt to do the same.

2. Exceptions:

This section does not apply to the transfer of a firearm, other than a handgun, to a juvenile under the following conditions:

- a. From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession does not occur until express permission has been obtained from the juvenile's parent or guardian;
- b. For a legitimate and lawful sporting purpose; or
- c. To a juvenile who is under direct adult supervision in an appropriate educational program.

2. Classification:

Class III Felony

- Law enforcement officer shall confiscate such firearm to be held by the agency employing such officer until it no longer is required as evidence.

*NOTE: This section applies to the transfer of a *handgun* to a juvenile, except as specifically provided in [28-1204].

POSSESSION OF A FIREARM AT A SCHOOL: *2011

Update*

1. Elements: [28-1204.04]

It is unlawful for any person:

- a. To possess a firearm,
- b. In a school, on school grounds, in a school-owned vehicle,

or at a school-sponsored activity or athletic event.

2. Exceptions:

This section shall not apply to:

- a. Firearms issued or possessed by active or reserve members of the U.S. military, Nebraska National Guard, Reserve Officers Training Corps, or peace officers or other duly authorized law enforcement officers when on duty or training;
- b. Possession of firearms by peace officers or other authorized law enforcement officers when contracted by a school to provide school security or school event control services
- c. Firearms which may be lawfully possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor;
- d. Firearms which may lawfully be possessed by a member of a college or university rifle team, within the scope of such person's duties as a member of the team;
- e. Firearms which may lawfully be possessed by a person employed by a college or university in Nebraska as part of an agriculture or a natural resources program, within the scope of such person's employment;
- f. Unloaded firearms contained within a private vehicle operated by a non-student adult, which are either:
 - (1) Encased, meaning enclosed in a case expressly made for containing a firearm and is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed,
 - (2) Or are in a locked firearm rack on a motor vehicle;
- g. A concealed handgun carried in a vehicle on or the person of a valid holder of a permit issued under the Concealed Handgun Permit Act if:
 - (1) The permit holder is in a vehicle on any parking area that is open to the public and used by a school, and
 - (2) Prior to exiting the vehicle, the handgun is locked

inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or a hardened compartment securely attached to a motorcycle.

2. Classification:

Class II Misdemeanor

- Any firearm possessed in violation of this section shall be confiscated without warrant by a peace officer, school administrator, or teaching personnel.
- Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable to be held for evidence.

OFFICER IS REQUIRED TO PETITION FOR DESTRUCTION OF A CONFISCATED FIREARM: [28-12.04.04(4)]

Any firearm that has been confiscated pursuant to sections [28-1204], [28-1204.02], or [28-12.04] shall be held by the officer for delivery to property division of the officer's law enforcement agency and then held for as long as the firearm is needed as evidence.

- The officer who receives such firearm shall cause to be filed in district court a petition for destruction of such firearm within ten days after the confiscation.
- The petition shall include a description of the firearm, the name of the owner (if known), the essential elements of the violation that caused the confiscation, and a request for disposition and destruction in such manner as the court may direct.
- A firearm with significant antique value or historical significance as determined by the Nebraska State Historical Society is not to be destroyed, but will be sold at auction and the proceeds remitted to the Nebraska State Treasurer.

USE OF A DEADLY WEAPON TO COMMIT A FELONY:

1. Elements: [28-1205(1)]

It is unlawful for any person:

- a. To use a firearm, knife, brass or iron knuckles, or any other deadly weapon,
 - b. To commit any felony which may be prosecuted in NE.
- 2. Classification:**
- Class IC Felony if the deadly weapon is a firearm.
 - Class II Felony for a deadly weapon other than a firearm.

*NOTE: Use of a deadly weapon includes the discharge, employment, or visible display of any part of a deadly weapon or destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a weapon or device (regardless of whether it was actually discharged, employed, or displayed).

- This is a separate and distinct offense from the felony itself.

***POSSESSION OF A DEADLY WEAPON DURING
THE COMMISSION OF A FELONY:***

1. Elements: [28-1205(2)]

It is unlawful for any person to possess:

- a. A firearm, knife, brass/iron knuckles, or destructive device,
- b. During the commission of any felony which may be prosecuted in a court of Nebraska.

2. Classification:

- Class II Felony if the deadly weapon is a firearm.
- Class III Felony if the deadly weapon is not a firearm

*NOTE: Possession of a deadly weapon may be proved by evidence demonstrating either actual or constructive possession of a firearm, knife, brass/iron knuckles, or destructive device during, immediately prior to, or immediately after the commission of a felony.

- This is a separate and distinct offense from the felony itself.

***POSSESSION OF A DEADLY WEAPON
BY A PROHIBITED PERSON:***

1. Elements: [28-1206(1)(a)]

It is unlawful for a person to:

- a. Possess a firearm, a knife, or brass or iron knuckles
- b. If such person:
 - (1) Has been previously been convicted of a felony, OR
 - (2) Is a fugitive from justice, OR
 - (3) Is knowingly violating a current and validly issued domestic violence protection order.

2. Classification:

- Class III Felony if the deadly weapon is not a firearm.
- Class ID Felony for a first offense if the deadly weapon is a firearm.
- Class IB Felony for a second or subsequent offense and if the deadly weapon is a firearm.

POSSESSION OF A DEADLY WEAPON BY A PROHIBITED PERSON WITH A MISDEMEANOR DV CONVICTION:

1. Elements: [28-1206(1)(b)]

It is unlawful for any person:

- a. Who has been convicted of a misdemeanor crime of domestic violence,
- b. Within the past seven years,
- c. To possess any firearm or brass or iron knuckles.

2. Definition:

For purposes of this section, *misdemeanor crime of domestic violence* means one that fits either of the following criteria:

- a. A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe that:
 - (1) Has as an element the use or attempted use of physical force or the threatened use of a deadly weapon, AND
 - (2) That is committed against the offender's spouse, former spouse, a person with whom he/she has a child in common whether or not they have been married or

lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section [28-323]; OR

b. A misdemeanor conviction for:

- (1) Assault third degree [28-310], Stalking [28-311.04(1)], False Imprisonment second degree [28-315], or Domestic Assault third degree [28-323(1)], or any attempt or conspiracy to commit one of these offenses;
- (2) And the crime is committed against the offender's spouse, former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section [28-323].

3. Exceptions:

A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

- a. The person was represented by counsel in the case or knowingly and intelligently waived that right; AND
- b. If entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried to a jury; or the person knowingly and intelligently waived that right.

4. Classification:

Class III Felony

POSSESSION OF A DEFACED FIREARM:

1. Elements: [28-1207]

It is unlawful for any person to:

- a. Knowingly possess, receive, sell, or lease any firearm
 - b. Other than by delivery to law enforcement officials,
 - c. From which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed.
 2. **Classification:**
Class III Felony
- DEFACING A FIREARM:***
1. **Elements:** [28-1208]
It is unlawful for any person to:
 - a. Intentionally,
 - b. Remove, deface, cover, alter, or destroy,
 - c. The manufacturer's identification mark or serial number or other distinguishing numbers,
 - c. On any firearm.
 2. **Classification:**
Class III Felony

FAILURE TO REGISTER A TRANQUILIZER GUN:

1. **Elements:** [28-1209]
It is unlawful for any person to:
 - a. Fail or neglect to register any owned gun or other device,
 - b. That is designed, adapted or used for projecting darts or other missiles containing tranquilizers or other chemicals or compounds that produce unconsciousness or temporary disability in live animals.
2. **Classification:**
Class III Misdemeanor
Such guns must be registered with the county sheriff of the county in which the owner of the gun or device resides.

SALE OF A TRANQUILIZER GUN MUST BE REPORTED:

1. **Elements:** [28-1210]
The seller of any gun or device described in section [28-1209]:
 - a. Must immediately reported the sale to the sheriff of the

- county of the sale,
- b. Including the name and address of the purchaser and the make and number of the gun or device.
- 2. Classification:**
Failure to immediately notify the sheriff of the sale of a tranquilizer gun is a Class III Misdemeanor.

DISCHARGE OF A FIREARM AT AN OCCUPIED OR INHABITED STRUCTURE OR VEHICLE:

- 1. Elements:** [28-1212.02]
It is unlawful for any person to:
- a. Unlawfully and intentionally,
 - b. Discharge a firearm,
 - c. At an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home, or inhabited camper unit.
- 2. Definitions:**
- ***Inhabited*** means currently being used for dwelling purposes;
 - ***Occupied*** means that a person is physically present in the building, motor vehicle, or aircraft.
- 3. Classification:**
Class ID Felony

DISCHARGING ANY FIREARM OR WEAPON FROM ANY PUBLIC HIGHWAY, ROAD, OR BRIDGE

- 1. Elements:** [28-1335]
It is unlawful for any person to discharge:
- a. Any firearm or any weapon using any form of compressed gas as a propellant,
 - b. From any public highway, road, or bridge in Nebraska,
 - c. Unless otherwise allowed by statute.
- 2. Classification:**

Class III Misdemeanor

- The mandatory minimum fine shall be one hundred dollars.

***DISCHARGING A FIREARM AT A PERSON,
BUILDING OR VEHICLE:***

1. Elements: [28-1212.04]

It is unlawful for any person:

- a. To knowingly, and intentionally or recklessly,
- b. Discharge a firearm,
- c. While in any motor vehicle or in the proximity of any motor vehicle that such person has just exited,
- d. At or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home, or inhabited camper unit,
- e. Within the territorial boundaries of any city of the first class or county containing a city of the metropolitan class or primary class.

2. Definitions:

- *Cities of the first class* are cities with a population between 5,000 and 100,000 inhabitants [16-101];
- *Cities of the primary class* are cities with a population between one hundred thousand and than three hundred thousand inhabitants [15-101];
- *Cities of the metropolitan class* are cities with a population of three hundred thousand inhabitants or more [14-101].

3. Classification:

Class IC Felony

DISCHARGING FIREARM OR WEAPON FROM A HIGHWAY:

1. Elements: [28-1335]

It is unlawful for any person to:

- a. Discharge any firearm or any weapon that uses any form of compressed gas as a propellant,

- b. From any public highway, road, or bridge,
- c. Unless otherwise allowed by statute.

2. Classification:

Class III Misdemeanor

STOLEN FIREARMS, POSSESSION:

1. Elements: [28-1212.03]

It is unlawful for any person to:

- a. Possess, receive, retain, or dispose of,
- b. A stolen firearm,
- d. Knowing or believing that it has been stolen,
- e. Unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

2. Classification:

Class III Felony

HANDGUN TRANSFER CERTIFICATES: [69-2401] to [69-2449]

No person shall purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate from the chief of police or sheriff of the purchaser's place of residence. No person shall sell, lease, rent or transfer a handgun to a person who does not have a certificate.

1. Exemptions: [69-2403]

The acquisition or transfer of a handgun is exempt from the certificate requirements under the following circumstances:

- a. The handgun is acquired by a licensed firearms dealer under federal law;
- b. The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;
- c. The transfer is temporary and transferee remains (a) in the line of sight of the transfer or (b) within the premises of an established shooting facility;
- d. The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent;

- e. The person acquiring the handgun is a holder of a valid permit under the Concealed Handgun Permit Act; or
- f. The person acquiring the handgun is a peace officer as defined in section [69-2429].

2. Violations and Classification:

- a. Any person who willfully provides false information on an application shall be guilty of a Class IV felony.
- b. Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application or consent form shall be guilty of a class II misdemeanor in addition to other civil or criminal liability under state or federal law.
- c. Any other violation is a Class I Misdemeanor.

CONCEALED CARRY HANDGUN PERMITS: [69-2429]

1. Definitions:

- ***Concealed Handgun*** means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;
- ***Emergency Services Personnel*** means a volunteer or paid firefighter or rescue squad member or a person certified to provide emergency medical services pursuant to the Emergency Medical Services Act;
- ***Handgun*** means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;
- ***Peace Officer*** means any town marshal, local police chief or officer, sheriff or deputy, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other

persons with similar authority to make arrests;

- **Permitholder** means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act;
- **Proof of Training** means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:
 - (1) Has successfully completed a handgun training and safety course within the previous three years, OR
 - (2) Is a member of the active or reserve U.S. military or National Guard and has had handgun training within the previous three years that meets the minimum safety and training requirements of [69-2432].

2. Eligibility for Permit: [69-2433] **2012 Update**

To qualify for a permit, an applicant must:

- Be at least twenty-one years of age;
- Be a citizen of the United States;
- Have been a resident of Nebraska (including voting and paying taxes in Nebraska) for at least 180 days;
- Not be prohibited from purchasing or possessing a handgun by federal law – see [18 U.S.C. 922];
- Not have been convicted of any felony;
- Not have been convicted of a misdemeanor crime of violence within the previous ten years;
- Have no convictions relating to firearms, use of a weapon, or controlled substances in the past 10 years;
- Not be on parole, probation, house arrest, or work release;
- Not been found mentally ill and dangerous in the last 10 years or be currently mentally incompetent;
- Meet vision requirements similar to driver's license;
- Provide proof of training.

3. Officer Duty to Report Ineligibility: [69-2439]

It is the duty of any Peace Officer to bring an application for revocation if the officer has probable cause to believe that a permit holder is no longer meets the eligibility requirements.

- A 1st conviction of [69-2441], carrying a concealed handgun on prohibited *private* property is not a disqualifier, but a *public* property violation or 2nd offense could be. **2012 Update*
- The County Attorney of the jurisdiction prosecutes the case for revocation (or the Attorney General if the county attorney is unable or unwilling to do so).

4. Offenses Related to Conceal/Carry Permits:

Any time a peace officer personally stops, detains, questions, or addresses a permitholder for an official purpose or in the course of his or her official duties, a permitholder has certain duties, any violation of which is a criminal offense.

FAILURE TO INFORM OFFICER OR EMS OF CONCEALED HANDGUN: [69-2440]

1. Elements:

When a permitholder has a concealed handgun and is contacted by a peace officer or by emergency services personnel:

- a. The permitholder shall immediately inform the peace officer or emergency services personnel,
- b. That the permitholder is carrying a concealed handgun

2. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for any second or subsequent violation
- The permit may also be revoked

FAILURE TO DISPLAY BOTH HANDGUN PERMIT AND IDENTIFICATION: [69-2440]

1. Elements:

Any time a permitholder carries a concealed handgun, he/she shall display both:

- a. The permit to carry a concealed handgun, and
- b. His/her Nebraska Driver's License, State ID, or militaryThe permitholder shall immediately inform the peace officer or emergency services personnel,
- c. That the permitholder is carrying a concealed handgun

2. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for any second or subsequent violation
- The permit may also be revoked

FAILURE TO CARRY AND PRODUCE BOTH HANDGUN PERMIT AND IDENTIFICATION: [69-2440]

1. Elements:

Any time a permitholder carries a concealed handgun, the permitholder shall:

- a. Display both the permit to carry a concealed handgun
- b. And his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card
- c. When asked to do so by a peace officer or by emergency services personnel.

2. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for any second or subsequent violation
- The permitholder may also have his or her permit revoked

DUTY TO SURRENDER HANDGUN FOR OFFICER SAFETY: [69-2440]

1. Elements:

It is unlawful for a permitholder to:

- a. Fail to surrender or secure a handgun,
- b. Upon the direction of the peace officer or emergency personnel who has determined that it is necessary for the safety of any person present, including the peace officer or emergency services personnel.

2. Handgun to be Returned to Permitholder, When:

The officer shall return the handgun before releasing the permitholder from the scene and breaking contact when it has been determined that:

- a. The permitholder is not a threat to the safety of any person present, including the peace officer,
- b. AND the permitholder has not committed any other violation that would result in his or her arrest or the suspension or revocation of his or her permit.

3. Classification:

- Failure to surrender a handgun when ordered is a Class I Misdemeanor.
- The permit may also be revoked.

CONCEALED HANDGUNS IN PROHIBITED PLACES:

The general rule is that a permitholder may carry a concealed handgun *anywhere* in Nebraska, except in certain prohibited places.

1. Elements: [69-2441]

It is unlawful for any permitholder:

- a. To carry a concealed handgun,
- b. In a prohibited place.

2. Prohibited Places:

A permitholder may carry a concealed handgun anywhere in Nebraska, except any:

- Police, Sheriff, or State Patrol station or office;
- Detention facility, prison, or jail;
- Courtroom or building which contains a courtroom;

- Polling place during a bona fide election;
- Meeting of the governing body of a county, public school district, municipality, or other political subdivision;
- Meeting of the Legislature or a committee of the Legislature;
- Financial institution (except authorized security);
- Professional or semiprofessional athletic event;
- Building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, or a public or private college, junior college, or university;
- Place of worship (except authorized security);
- Hospital, emergency room, or trauma center;
- Political rally or fundraiser;
- Establishment having a liquor that derives over half its income from alcohol sales;
- Place where the possession or carrying of a firearm is prohibited by state or federal law;
- Any place or premises that has prohibited the carrying of concealed handguns and either (1) has posted conspicuous notice of the prohibition or (2) has asked a permit holder to remove the concealed handgun from the place or premises;
- Any other place or premises where State law prohibits handguns.

3. Parking Areas of Prohibited Places and Vehicles:

It is not a violation for a permitholder to carry a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any public parking area of a prohibited place if prior to exiting the vehicle, the handgun is locked

inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or a hardened compartment securely attached to the motorcycle.

- This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.
- An employer may prohibit employees or other persons who are permit holders from carrying concealed handguns in vehicles owned by the employer.

4. Classification:

- Class III Misdemeanor
- Class I Misdemeanor for any 2nd or subsequent violation
- The permit may also be revoked

CONCEALED HANDGUNS, ALCOHOL OR DRUGS PROHIBITED

1. Elements: [69-2441]

A permitholder shall not carry a concealed handgun:

- a. While he or she is consuming alcohol, OR
- b. While the permitholder has remaining in his/her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section [28-401].

2. Exception:

A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

3. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for any 2nd or subsequent violation
- The permit may also be revoked

***DISCHARGE OF A CONCEALED HANGUN,
DUTY TO REPORT INJURY OR DAMAGE:***

1. Elements: [69-2442]

- a. Any time a discharge of a concealed handgun carried by a permitholder results in injury to a person or property,
- b. The permitholder must report the incident to the Nebraska State Patrol on a form designated and maintained by NSP.

OUT OF STATE CARRY/CONCEAL PERMITS:

A valid license or permit to carry a concealed handgun issued by any other state or the District of Columbia shall be recognized as valid in Nebraska under the Concealed Handgun Permit Act if:

- a. The holder of the license or permit is not a resident of Nebraska.
AND
- b. The Nebraska Attorney General has determined that the standards for issuing such license or permit are equal to or greater than the standards imposed by the Act.
 - The Attorney General shall maintain and publish a list of jurisdictions have been determined to have standards equal to or greater than the standards imposed by the Act.

**CRIMES INVOLVING EXPLOSIVES OR
DESTRUCTIVE DEVICES:**

TERMS DEFINED: [28-1213]

- ***Person*** means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;
- ***Business Enterprise*** means any corporation, partnership, limited liability company, company, or joint-stock company;
- ***Explosive Materials*** means explosives, blasting agents, and detonators;
- ***Explosives*** means any chemical compound, mixture, or device, the primary or common purpose of which is to function by

- explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section [28-1241], and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but does not include common fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;
- **Blasting Agent** means any material or mixture, intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, as such subpart existed on Jan 1, 2010;
 - **Detonator** means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;
 - **Destructive device** means:
 - (1) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

- (2) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a)(i) of this section from which a destructive device may be readily assembled.
- (3) The term destructive device does not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to federal law, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;
- **Federal permittee** means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on Jan 1, 2010;
- **Federal licensee** means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on Jan 1, 2010; and
- **Smokeless propellants** means solid propellants commonly called smokeless powders, used in small arms ammunition.

POSSESSION OF EXPLOSIVE MATERIALS, FIRST DEGREE:

1. Elements: [28-1215]

It is unlawful for:

- a. Any person who is not eligible to obtain a permit from the Nebraska State Patrol,
- b. To possess or store explosive materials.

2. Exception:

This section does not apply to the transportation of explosive

materials in accordance with section [28-1235] or to any person who has obtained a permit from the Nebraska State Patrol to store or use such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials.

3. Classification:

Class IV Felony

POSSESSION OF EXPLOSIVE MATERIALS, SECOND DEGREE:

1. Elements: [28-1215]

It is unlawful for:

- a. Any person who is eligible to obtain a permit from the Nebraska State Patrol,
- b. Or who has valid educational, industrial, commercial, agricultural, or other legitimate need for a permit,
- c. To possess or store explosive materials without a permit.

2. Exception:

The same exclusions of section [28-1215] apply.

3. Classification:

Class I Misdemeanor

SALE OF EXPLOSIVES:

1. Elements: [28-1217]

It is unlawful for any person to:

- a. Intentionally sell, transfer, issue, or give any explosive materials,
- b. To any person who does not display a valid permit issued by the Nebraska State Patrol authorizing the storage or use of such explosive materials,
- c. Or, in the case of a business enterprise, does not display a permit to purchase such explosive materials.

2. Classification:

Class IV Felony

USE OF EXPLOSIVES WITHOUT PERMIT:

1. Elements: [28-1218]

It is unlawful for any person to:

- a. Use any explosive materials,
- b. For any purpose whatsoever,
- c. Without a permit from the Nebraska State Patrol,
- d. Or under the supervision of another who has a permit.

2. Classification:

- a. Class I Misdemeanor
- b. Class II Misdemeanor if the offender was eligible to receive a permit or had a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit.

*NOTE: Federal licensees and permittees must obtain permits from the Nebraska State Patrol to use explosive materials.

FALSE REPRESENTATIONS TO GET AN EXPLOSIVE PERMIT:

1. Elements: [28-1219]

It is unlawful for any person to:

- a. Withhold information, or
- b. Make any false, fictitious, or misrepresented statement, or
- c. Furnish or exhibit any false, fictitious, or misrepresented identification,
- d. For the purpose of obtaining a permit,
- e. Or for the purpose of obtaining relief from disability under the provisions of sections [28-1213] to [28-1239],
- f. Or knowingly makes any false entry in a record which such person is required to keep pursuant to such sections or the regulations promulgated pursuant to such sections.

2. Classification:

Class IV Felony

POSSESSION OF A DESTRUCTIVE DEVICE:

1. Elements: [28-1220]

It is unlawful for any person to:

- a. Have possession of a destructive device.

2. Definition:

Destructive devices means:

- a. Any explosive, incendiary, chemical or biological poison gas, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or
- b. Any combination of parts either designed or intended for use in converting any device into a destructive device from which a destructive device may be readily assembled.
- c. The term does not include a device that is neither designed nor redesigned for use as a weapon, a weapon that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, authorized surplus military ordnance pursuant to federal law, any device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property.

3. Classification:

Class IV Felony

*NOTE: It is not a defense to have a permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle explosive materials.

THREATENING THE USE OF EXPLOSIVES:

1. Elements: [28-1221]

It is unlawful for any person to:

- a. Convey any threat,
- b. Or maliciously convey to any other person false information knowing the same to be false,

- g. Concerning an attempt or alleged attempt being made or to be made,
 - h. To kill, injure, or intimidate any individual,
 - i. Or to unlawfully damage or destroy any building, vehicle, or other real or personal property,
 - j. By means of any explosive material or destructive device.
- 2. Classification:**
Class IV Felony

PLACING A FALSE BOMB:

- 1. Elements:** [28-1221]
It is unlawful for any person to:
- a. Place or cause to be placed,
 - b. Any device or object that by its design, construction, content, or character appears to be or contain a bomb, destructive device, or explosive, but is in fact an inoperative facsimile or imitation of a bomb, destructive device, or explosive,
 - c. And such person knows, intends, or reasonably believes is likely to cause public alarm or inconvenience.
- 2. Classification:**
Class IV Felony

USING EXPLOSIVES TO COMMIT FELONY:

- 1. Elements:** [28-1222]
It is unlawful for any person to:
- a. Use an explosive material or destructive device,
 - b. To commit any felony that may be prosecuted in Nebraska,
 - c. Or to possess an explosive during the commission of any felony which may be prosecuted in Nebraska.
- 2. Classification:**
- a. Class III Felony;
 - b. Class II Felony for a second or subsequent conviction

USING EXPLOSIVES TO DAMAGE PROPERTY:

1. Elements: [28-1223]

It is unlawful for any person to:

- a. Maliciously damage or destroy,
- b. Or maliciously attempt to damage or destroy,
- c. Any building, structure, vehicle, or other real or personal property
- d. By means of an explosive material or destructive device.

2. Classification:

- a. Class III Felony;
- b. Class II Felony if a personal injury results;
- c. If death results, using explosives to damage or destroy property shall be punished as for conviction of murder in the first degree.

USE OF EXPLOSIVES TO KILL OR INJURE:

1. Elements: [28-1224]

It is unlawful for any person to:

- a. Intentionally kill, injure or intimidate any individual
- b. Using explosive material or a destructive device.

2. Classification:

- a. Class III Felony;
- b. Class II Felony if personal injury results;
- c. If death results, using explosives to kill or injure any person shall be punished as for murder in the first degree.

IMPROPER OR UNSAFE STORING OR USE OF EXPLOSIVES:

1. Elements: [28-1225]

It is unlawful for any person to:

- a. Store or use any explosive materials in legitimate blasting operations in a manner not in conformity with safety regulations of the Nebraska State Patrol or the U.S. Secretary of the Treasury,
- b. Or to store any explosive materials at a place not

designated in a permit to store such explosive materials issued to such person by the Nebraska State Patrol.

2. Classification:

Class III Misdemeanor

THEFT OR LOSS OF EXPLOSIVES, REQUIRED REPORTING:

1. Elements: [28-1226]

It is unlawful for:

- a. Any person who has knowledge of the theft or loss of explosive materials,
- b. From his or her stock,
- c. To fail to report such theft or loss within twenty-four hours of discovery to the Nebraska State Patrol.

2. Classification:

Class III Misdemeanor

EXPLOSIVE MATERIAL OR DESTRUCTIVE DEVICES FOUND IN A VEHICLE: [28-1228]

Any explosive material or destructive device in a vehicle is deemed to be in the possession of *all* persons occupying such vehicle at the time such explosive material or destructive device is found.

- Unless is found upon the person of one of the occupants;
- This presumption does not apply to the driver of a vehicle for hire, acting in the lawful course of business.
- This presumption does not apply to the occupants of a vehicle being operated in compliance with state and federal permit and safety requirements and if explosive material but no destructive device is found therein.

FIREWORKS VIOLATIONS:

FIREWORK DEFINITIONS: [28-1241]

As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

- ***Distributor*** means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;
- ***Jobber*** means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;
- ***Retailer*** means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;
- ***Sale*** includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;
- ***Fireworks*** means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;
- ***Common fireworks*** means any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., small devices designed to produce audible effects such as whistling devices, ground devices containing fifty milligrams or less of explosive composition, and aerial devices and firecrackers containing one hundred thirty milligrams or less of explosive composition. Class C explosives as classified by the United States Department of Transportation shall be considered common fireworks;
- ***Consumer fireworks*** means only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of

making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved by the State Fire Marshal; and

- **Display fireworks** means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks shall be considered an explosive as defined in section [28-1213] and shall be subject to sections [28-1213] to [28-1239], except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued by the State Fire Marshall.

THROWING FIRECRACKERS:

1. Elements: [28-1242]

It is unlawful for any person to throw any firework, or any object that explodes upon contact with another object:

- a. From or into a motor vehicle; or
- b. Onto any street, highway, or sidewalk; or
- c. At or near any person; or
- d. Into any building; or
- e. Into or at any group of persons.

2. Classification:

Class III Misdemeanor

FIREWORK USE, SALE, OR POSSESSION:

1. Elements: [28-1244]

It is unlawful for any person to:

- a. Possess, discharge, sell, offer to sell, or bring into Nebraska,
- b. Any fireworks,
- c. Other than consumer fireworks,

- d. Except as provided in section [28-1245].
- 2. **Exceptions:** [28-1245]
The prohibition of this section does not apply to:
 - a. Display fireworks purchased from a licensed distributor; or
 - b. Display fireworks purchased by the holder of a display permit issued pursuant to section [28-1239.01]; or
 - c. Fireworks brought into Nebraska for storage by a licensed distributor and held for sale outside of this state; or
 - d. Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or
 - e. Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a grain of explosive material.
- 3. **Classification:**
Class III Misdemeanor
 - Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
 - The fireworks shall be destroyed upon conviction.

OTHER FIREWORK VIOLATIONS:

- 1. **Elements:** [28-1248]
It shall be unlawful:
 - a. For any person not licensed as a distributor or as a jobber to bring any fireworks into this state, OR
 - b. For any retailer or jobber in NE to sell any fireworks NE which have not been purchased from a licensed distributor.
- 2. **Classification:**
Class III Misdemeanor
 - Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
 - The fireworks shall be destroyed upon conviction.

*NOTE: A copy of each purchase invoice for fireworks must

be available for inspection. Such invoice shall show the license number of the distributor or jobber.

RETAIL FIREWORK SALES:

1. Elements: [28-1249]

The following restrictions apply to retail sales:

- a. Consumer fireworks may not be sold at retail outside the limits of any incorporated city or village;
- b. Consumer fireworks may be sold at retail only between June 24 and July 5, and December 28 and January 1.

2. Classification:

Class III Misdemeanor

- Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
- The fireworks shall be destroyed upon conviction.

WARRANTS FOR FIREWORK VIOLATIONS: [28-1250]

A warrant may be issued for the seizure of illegally held fireworks.

- Seized fireworks shall be safely kept by the magistrate to be used as evidence and destroyed after conviction.

**CIVIL DISORDER INVOLVING
EXPLOSIVES OR FIREARMS:**

TERMS DEFINED:

- **Civil Disorder** shall mean any public disturbance involving acts of violence that causes an immediate danger of or results in damage or injury to persons or property;
- **Explosive or Incendiary Device** shall mean:
 - (1) Dynamite and all other forms of high explosives,
 - (2) Any explosive bomb, grenade, missile, or similar device, and
 - (3) Any incendiary bomb or grenade, firebomb, or similar device, including any device that (i) consists of or includes

a breakable container including a flammable liquid or compound and a wick of any material which, when ignited, is capable of igniting such flammable liquid or compound and (ii) can be carried or thrown by one individual acting alone;

- **Firearm** shall mean any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

TEACHING OR DEMONSTRATING UNLAWFUL USE OF EXPLOSIVES OR FIREARMS:

1. Elements: [28-1481]

It is unlawful to teach or demonstrate to any other person:

- a. The use, application, or making of any firearm, explosive, or incendiary device capable of causing injury or death to persons,
- b. Knowing or with reason to know, or with the intent that such information or ability will be unlawfully employed for use in or in furtherance of a civil disorder.

2. Classification:

Class IV Felony

TRAINING OR PRACTICING UNLAWFUL USE OF EXPLOSIVES OR FIREARMS:

1. Elements: [28-1481]

It is unlawful for any person to:

- a. Assemble with one or more persons,
- b. For the purpose of training, practicing, or being instructed in the use of any firearm or explosive or incendiary device capable of causing injury or death to persons,
- c. With intent to unlawfully employ such training, practice, or instruction for use in or in furtherance of a civil disorder.

2. Classification:

Class IV Felony

MISCELLANEOUS OFFENSES:

DISCOVERY OF HUMAN REMAINS:

1. Elements: [12-1205]

Any person who:

- a. Encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground,
- b. Shall immediately cease any activity that may cause further disturbance of the unmarked human burial.
- c. And report such discovery to local law enforcement within forty-eight hours.

2. Law Enforcement Duty: [12-1206]

A law enforcement shall promptly notify the owner of the land where human skeletal remains or burial goods were discovered, the county attorney, and the Nebraska State Historical Society.

3. Classification:

It is a Class III Misdemeanor to knowingly fail to report the discovery of human skeletal remains or burial goods to law enforcement.

*NOTE: Remains or burial goods discovered in conjunction with highway construction must be reported within 48 hours, and construction must stop until the remains or goods are removed by the appropriate agency.

REMOVING OR CONCEALING DEAD HUMAN REMAINS:

1. Elements: [28-1301]

A person commits the offense of removing, abandoning, or concealing human skeletal remains or burial goods if he/she:

- a. Knowingly digs up, disinters, removes, or carries away from its place of deposit or burial any such remains or goods; OR
- b. Knowingly throws away or abandons any such remains or goods in any place other than a regular place for burial and

- under a proper death certificate; OR
 - c. Receives, conceals, purchases, sells, transports, trades, or disposes of any such remains or goods, knowing or with reason to know that such remains or goods have been dug up, disinterred, or removed from their place of deposit or burial or have not been reported in a proper death certificate; OR
 - d. Attempts, aids, incites, assists, encourages, or procures any of the same to be done;
- 2. Exceptions:**
This section shall not apply to:
- A body lawfully authorized or directed to be delivered for lawful dissection;
 - The lawful removal of human remains or burial goods within a cemetery or to another cemetery.
 - The lawful scholarly excavation by a professional archaeologist of a nonburial site that was unintentionally encountered.
 - Any lawful archaeological excavation by the Nebraska State Historical Society.
- 3. Classification:**
Class IV Felony

CONCEALING THE DEATH OF A PERSON:

- 1. Elements:** [28-1302]
It is unlawful for any person to:
- a. Conceal the death of another person,
 - b. And thereby prevent a determination of the cause or circumstances of death.
- 2. Classification:**
Class I Misdemeanor

DANGEROUS ARTIFICIAL POND OR STAGNANT WATER:

1. Elements: [28-1303]

It is unlawful for any person to:

- a. Build, erect, continue, or keep up a dam or other obstruction,
- b. In any river or stream of water in Nebraska, to raise an artificial pond, or produce stagnant waters,
- c. That is manifestly injurious to the public health and safety.

2. Classification:

Class III Misdemeanor

- The court shall also order such nuisance to be abated or removed.

POLLUTING RUNNING WATER:

1. Elements: [28-1304]

It is unlawful for any person to:

- a. Put a dead animal, carcass or part, or other filthy substance,
- b. Into any well, spring, brook or branch of running water that is for domestic use.

2. Classification:

Class IV Misdemeanor

EXPOSING OFFENSIVE (SLAUGHTERHOUSE) MATTER:

1. Elements: [28-1305]

It is unlawful to:

- a. Put the carcass of any dead animal, the offals from any slaughter house, butcher's establishment, packing house, or fish house, any spoiled meats, spoiled fish, or putrid animal substance, or the contents of any privy vault,
- b. Upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common,
- c. Or to permit the same to remain in any of the aforesaid situations, to the annoyance any person,

- d. Or neglect or refuse to remove or abate the nuisance within twenty-four hours after knowledge of such nuisance or after notice in writing from the proper authority in which the nuisance exists.
2. **Classification:**
Class V Misdemeanor
 - If the nuisance is not abated within twenty-four hours thereafter, it shall be deemed a second offense.
 - Every neglect of each twenty-four hours thereafter shall be considered an additional offense.

RAILROAD POLLUTION:

1. **Elements:** [28-1306]
It shall be unlawful for:
 - a. Any railroad company operating in this state to bring or cause to be brought into Nebraska from an adjoining state,
 - b. Any empty car used for transporting hogs or sheep, or for grain and stock that has any filth of any kind in such car.
2. **Classification:**
Class V Misdemeanor
A railroad car must be thoroughly cleaned before it is allowed to pass into Nebraska.

SELLING DISEASED MEAT:

1. **Elements:** [28-1307]
It shall be unlawful for any person to:
 - a. Sell or offer for sale,
 - b. The flesh of a diseased animal,
 - c. Whether such animal died of disease or was butchered when in a diseased condition.
2. **Classification:**
Class IV Felony

WATERING LIVESTOCK WITHOUT PERMISSION:

1. Elements: [28-1308]

It is unlawful for any person to:

- a. Water livestock at any watering trough or tanks belonging to any private owner without the consent of such owner.
- b. This section does not apply to livestock that is in transportation, delivered into any stockyards, or in holding pens awaiting slaughter.

2. Classification:

Class V Misdemeanor

INTIMIDATION BY TELEPHONE:

1. Elements: [28-1310]

A person commits intimidation by telephone if he/she telephones another with the intent to terrify, intimidate, threaten, harass, annoy, or offend another, and does any of the following:

- a. Calls anonymously, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or
- b. Uses indecent, lewd, lascivious, or obscene language or suggests any indecent, lewd, or lascivious act; or
- c. Threatens to inflict injury to any person or to the property of any person; or
- d. Intentionally fails to disengage the connection; or
- e. Attempts to extort money or other thing of value from any person.

2. Proving the Elements:

- a. The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.
- b. It makes no difference whether or not conversation ensues for an anonymous call to disturb another's peace.
- c. The offense shall be deemed to have been committed either

at the place where the call was made or where it was received.

3. **Classification:**
Class III misdemeanor

INTERFERING WITH A PUBLIC SERVICE COMPANY:

1. **Elements:** [28-1311]
It is unlawful to:
 - a. Willfully and purposely,
 - b. Interrupt or interfere with
 - c. The transmission of telegraph or telephone messages or the transmission of light, heat and power in this state.
2. **Classification:**
Class II Misdemeanor

INTERFERING WITH THE POLICE RADIO SERVICE

1. **Elements:** [28-1312]
It is unlawful for a person to possess, have in a motor vehicle, or to equip or install in or on any motor vehicle, a police radio set that:
 - a. In any way intentionally interferes with the transmission or reception of radio messages by any law enforcement agency and hinders any such agency in fulfillment of its duties; or
 - b. Intercepts such radio signals to evade or assist others in evading arrest; or
 - c. Results in the use of such communication for monetary or personal gain.
2. **Definition:**
Police Radio Set shall mean any radio set or apparatus capable of either receiving or transmitting radio frequency signals within the wavelength or channel which is or may hereafter be allocated by the FCC for the police radio service.
3. **Exceptions:**

This section does not apply to:

- a. Peace officers and members of a law enforcement agency;
- b. Any person with written permission from the head of a law enforcement agency to possess and use any radio set or apparatus within the wavelength or channel assigned to the agency granting the permission; or
- c. Legal newspapers [25-523], or radio, television or cable antenna television stations licensed pursuant to law, monitoring messages of signals for news purposes only without rebroadcasting or republishing verbatim.

4. Officer Duty to Seize:

It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment possessed or used in violation of this section.

- Upon conviction the court shall order such equipment destroyed or forfeited to the State of Nebraska.

5. Classification:

Class I Misdemeanor

UNLAWFUL USE OF A WHITE CANE OR GUIDE DOG:

1. Elements: [28-1313]

It is unlawful for a person to:

- a. Carry, display, or otherwise make use of a white cane or guide dog,
- b. If he/she is not blind as defined by law.

2. Classification:

Class III Misdemeanor

*NOTE: Use of a white cane or guide dog is officially recognized as an indication that the bearer is blind.

FAILURE TO OBSERVE A BLIND PERSON:

1. Elements: [28-1314]

It is unlawful for the operator of any vehicle or other

conveyance to fail to:

- a. Give special consideration to the bearer of a white cane or user of a guide dog; and
- b. Stop and remain when approaching such bearer until such bearer has safely reached a position well outside the course normally used by the vehicle or other conveyance.

2. Classification:

Class III Misdemeanor

UNLAWFUL USE OF LOCKS AND KEYS:

1. Elements: [28-2316]

It is unlawful to:

- a. Possess, sell, offer to sell, or give to any person any try-out key, manipulation key, wiggle key, or any other device designed to be used in place of the normal change key of any motor vehicle, or
- b. Duplicates a master key for anyone unless written permission has been granted by the person who has legal control of the master key,
- c. Unless one of the exceptions applies.

2. Exceptions:

It is not illegal:

- a. To sell, offer to sell, or give such a key or device to a law enforcement agency, licensed dealer, vehicle manufacturer, or person regularly carrying on the profession of a locksmith;
- b. To possess such key or device if he/she is a locksmith, locksmith manufacturer, licensed dealer, motor vehicle manufacturer, or law enforcement agency;
- c. For the owner of two or more vehicles to possess a *change key* that can be used on multiple owned vehicles, or for such an owner to change the locks on owned vehicles so that they are keyed alike, or to make or duplicate the original change keys for such an owner.

3. Classification:
Class III Misdemeanor

*NOTE: All *master keys* and all duplications of them shall be stamped with the words “DO NOT DUPLICATE”.

- But, it is not illegal to stamp other keys with such words.

INTERFERING WITH HUNTING, TRAPPING, OR FISHING:

1. Elements: [37-564]

It is unlawful to:

- a. Knowingly and intentionally
- b. Interfere, attempt to interfere, or aid/assist in the interference with another person
- c. Who is not trespassing, and
- b. Is *lawfully* hunting, trapping, fishing, or engaged in activity associated with hunting or trapping, or fishing.

2. Classification:

Class III Misdemeanor.

- In addition, any person who damages crops, fields, livestock, fences, gates, timber, water, or any other property with any aircraft, vessel, vehicle, snowmobile, or other conveyance is liable to the property owner.

3. Defenses:

- a. It is an *affirmative defense* that the alleged offender was not trespassing and was engaged in a lawful activity in conflict with hunting, trapping, or fishing or activity associated with hunting, trapping, or fishing described in such section
- b. Interfering does not include releasing a non-fur-bearing animal, except a coyote, from a trap.

HUNTING THROUGH THE INTERNET:

1. Definition [37-572]

Hunt through the Internet means to hunt living wildlife in real

time using Internet services to remotely control actual firearms and to remotely discharge live ammunition.

2. Elements:

It is unlawful for any person to:

- a. Hunt through the Internet, or
- b. Host hunting through the Internet, or otherwise enable another person to hunt through the Internet.

3. Classification:

Class II Misdemeanor

- Minimum \$250 for a first offense, minimum \$500 for any subsequent offense.
- An offender will be ordered not to hunt, fish, or trap in this state for not less than one year from the date of sentencing.
- Any firearm, computer, equipment, appliance, or conveyance used in violation of this section is contraband and shall be confiscated and forfeited to the state upon seizure by law enforcement authorities.

*NOTE: A conservation officer may offer to host or enable others to hunt through the Internet for the sole purpose of obtaining evidence of a violation of this section.

MAINTAINING A NUISANCE:

1. Elements: [28-1321]

A person commits the offense of maintaining a nuisance if he/she:

- a. Erects, continues, uses, maintains, or causes,
- b. Any nuisance,
- c. To the injury of any part of the citizens of Nebraska.

2. Specific Illegal Nuisances:

The following shall be deemed nuisances:

- A place of business that becomes injurious and dangerous to the health, comfort, or property of individuals or the

public by occasioning noxious exhalations, noisome or offensive smells;

- The unauthorized obstructing or impeding of passage on any navigable river, harbor, or collection of water;
- The corrupting or rendering unwholesome or impure of any watercourse, stream, or water;
- Unlawfully diverting any watercourse from its natural course or state to the injury or prejudice of others;
- The obstructing or encumbering by fences, building, structures or otherwise of any of the public highways or streets or alleys of any city or village.

3. Classification:

Class III Misdemeanor

- The offense is deemed to have been committed in any county whose inhabitants have been injured or aggrieved by the nuisance.
- Upon conviction, the court shall order the nuisance abated or removed.

DISTURBING THE PEACE:

1. Elements: [28-1322]

It is unlawful for any person to:

- a. Intentionally,
- b. Disturb the peace and quiet,
- c. Of any person, family, or neighborhood.

2. Classification:

Class III Misdemeanor

DECEPTIVE OR MISLEADING ADVERTISING:

1. Elements: [28-1476]

It is unlawful for any person, firm, corporation, or association,

- a. To make, published, disseminate, circulate, place before the public, or cause the same,
- b. In a newspaper, publication, handbill, poster, bill, circular,

- pamphlet, or letter, or in any other way,
 - c. An advertisement of any merchandise for sale at retail at less than original actual or replacement cost, whichever is lower,
 - d. If the merchant does not have a sufficient quantity of merchandise to meet the reasonable expected demand,
 - e. Or if the advertisement either:
 - (1) Fails to state the quantity of merchandise available for sale, or
 - (2) Fails to state that the advertiser is discontinuing the item.
2. **Classification:**
Class III Misdemeanor

IRRIGATION SYSTEMS AND PUBLIC ROADS:

1. **Elements:** [39-302]
- a. A sprinkler irrigation system that due to location or design,
 - b. Diverts, or is capable of diverting, water onto or across a public road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road; or allows water to accumulate on the road,
 - c. Shall be equipped with a device which will automatically shut off the endgun of the irrigation system causing such diversion or accumulation of water.
2. **Classification:**
Class IV Misdemeanor.
- There is no crime if the water obstruction is due to mechanical failure of an irrigation system that has been lawfully placed, unless it the second such mechanical failure in one calendar year.

OPEN BURNING BAN:

1. **Elements:** [81-520.01]
- There is a statewide open burning ban on all bonfires, outdoor

rubbish fires, and fires for the purpose of clearing land.

2. Permits and Waiver:

The fire chief of a local fire department or designee may issue an open burning permit or may waive the ban.

- Permits must be in writing, signed by the fire chief or designee, and on a form prescribed by the State Fire Marshal. The permit fee shall not exceed ten dollars.
- Waiver of the ban may occur when conditions are acceptable to the chief designee.
- Anyone burning in such jurisdiction when the open burning ban has been waived shall notify the fire department of his or her intention to burn.

3. Classification:

Class IV Misdemeanor.

OFFENSES RELATED TO PICKETING:

*NOTE: Officers should contact their county attorney or seek an opinion from their agency legal advisor before enforcing sections [28-1317] to [28-1320].

PICKETING SIGNS REQUIRED: [28-1318(4)]

Any person who *legally* picketS by any means or methods other than those forbidden in this section or in section 28-1317 shall visibly display on his or her person a sign showing the name of the protesting organization he or she represents.

The composition of the sign shall be uppercase lettering of not less than two and one-half inches in height.

UNLAWFUL PICKETING:

1. Elements: [28-1317]

A person commits the offense of unlawful picketing if he/she:

- a. Either singly or by conspiring with others,
- b. Interferes, or attempts to interfere with any other person's

lawful right to work or right to enter upon or pursue any lawful employment, in any lawful occupation, self-employment, or business carried on in Nebraska,

- c. By engaging in one of the acts prohibited by this section,
- d. For the purpose of :
 - (1) Inducing or influencing,
 - (2) Or attempting to induce or influence,
 - (3) Such person to quit his or her employment, or to refrain from seeking or freely entering into employment.

2. Prohibited Acts:

Unlawful picketing acts are:

- a. Using threatening language toward or in the presence/hearing of such person or a member of his/her immediate family; or
- b. Following or intercepting such person to or from their work, home, or lodging, or about the city, against the will of such person; or
- c. Menacing, threatening, coercing, intimidating, or frightening in any manner; or
- d. Assaulting such person; or
- e. Picketing or patrolling the place of residence of such person, or any street, alley, road, highway, or any other place, where such person may be, or in the vicinity thereof, against the will of such person.

3. Classification:

Class III Misdemeanor

- Each violation shall constitute a separate offense.

MASS PICKETING:

1. Elements: [28-1318]

A person commits the offense of mass picketing if he/she:

- a. Either singly or in concert with others,
- b. Engages in or aids and abets any form of picketing activity,
- c. That constitutes an obstacle (obstruction by persons,

- placing of vehicles, or other physical obstructions),
- d. To the free ingress and egress:
 - (1) To and from the premises being picketed, or
 - (2) To any other premises, or
 - (3) Upon the public roads, streets, or highways.

2. Classification:

Class III Misdemeanor

INTERFERING WITH PICKETING:

1. Elements: [28-1319]

It is unlawful for any person:

- a. Acting separately or with others,
- b. Interfere with any picketing, other than mass picketing,
- c. This provision does not apply to duly qualified peace officers or court action.

2. Classification:

Class III Misdemeanor

INTIMIDATING PICKETING WORKERS:

1. Elements: [28-1320]

It is unlawful for any person to:

- a. Intimidate or attempt to intimidate any striker,
- b. By threatening of loss of any right or condition of employment,
- c. That directly or indirectly would affect the lawful conduct of said striker in any way.

2. Classification:

Class III Misdemeanor

RESTRICTIONS ON PICKETING / PROTESTING

NEAR A FUNERAL: [28-1320.03]

1. Legislative Findings – A Balance of Rights:

- a. Nebraska law recognizes the right to peacefully organize and attend funerals and privately mourn the death of

relatives. Such rights are violated when funerals are targeted for picketing or protest activities.

- b. The law also recognizes the right to free speech, and allows picketers and protestors the opportunity to communicate their message at a time and place that minimizes the interference with the rights of funeral participants.
2. **Definition:**
The term ***Funeral*** means ceremonies and memorial services held in connection with the burial or cremation of the dead but not processions on public streets or highways.
3. **Elements:**
It is unlawful for any person:
 - a. To engage in protest activities,
 - b. Within five hundred feet of a cemetery, mortuary, church, or other place of worship,
 - c. From one hour prior to through two hours following the commencement of a funeral.
4. **Classification:**
Unlawful picketing a funeral is a Class III Misdemeanor

GAMBLING OFFENSES:

PROMOTING GAMBLING FIRST DEGREE:

1. **Elements:** [28-1102]
It is unlawful for any person to knowingly advance or profit from unlawful gambling activity by:
 - a. Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling one thousand dollars or more; or
 - b. Receiving, in connection with any unlawful gambling scheme or enterprise, more than one thousand dollars of money played in the scheme or enterprise in any one day.
2. **Classification:**
 - Class I Misdemeanor,

- Class IV Felony for the second offense,
- Class III Felony for a third or subsequent offense

PROMOTING GAMBLING SECOND DEGREE:

1. Elements: [28-1103]

It is unlawful for any person to advance or profit from any unlawful gambling activity by:

- Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling less than one thousand dollars;
- Receiving less than one thousand dollars of money played in a gambling scheme or enterprise in any one day; or
- Betting something of value in an amount of three hundred dollars or more with one or more persons in one day.

2. Classification:

Class II Misdemeanor

PROMOTING GAMBLING THIRD DEGREE:

1. Elements: [28-1104]

It is unlawful for any person to:

- Knowingly participate in unlawful gambling as a player,
- Betting less than three hundred dollars in any one day.

2. Classification:

Class IV Misdemeanor

POSSESSION OF GAMBLING RECORDS:

1. Elements: [28-28-1105]

It is unlawful for any person who is not a player to knowingly possess any writing, paper, instrument, or article which is:

- Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or
- Of a kind commonly used in the operation, promotion, or

playing of a lottery or mutual scheme or enterprise or other scheme not conducted pursuant Nebraska law, and has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information not permitted by law.

2. **Classification:**
Class II Misdemeanor

GAMBLING DEBT COLLECTION:

1. **Elements:** [28-1105.01]
It is unlawful for any person to:
 - a. Employ any force or intimidation or threat of the same,
 - b. In order to collect any debt,
 - c. Which results from gambling.
2. **Classification:**
Class III Felony

POSSESSION OF A GAMBLING DEVICE:

1. **Elements:** [28-1107]
It is unlawful for any person to:
 - a. Manufacture, sell, transport, place, or possess any gambling device,
 - b. Knowing that it shall be used in the advancement of unlawful gambling activity,
 - c. Or conduct or negotiates any transaction affecting or designed to affect ownership, custody, or use of the same.
2. **Classification:**
Class II Misdemeanor

BINGO AND LOTTERY CONTROL ACT: [9-1101]

Violations or complaints related to bingo, pickle cards, lottery, raffles, etc should be referred to the Charitable Gaming Division of the Department of Revenue. Such regulations exist for several purposes:

- To promote the health and welfare of the public;

- To protect the economic welfare and require accurate record keeping so that the revenue-raising potential be fully exposed;
- To ensure that the profits are used for legitimate purposes; and
- To prevent the subversion by improper elements of any profits gained for legitimate purposes.

ALCOHOL VIOLATIONS:

OFFICER MUST MAKE COMPLAINT FOR

ALCOHOL VIOLATIONS: [53-197(1)]

Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court.

- An officer that neglects or refuses so make such complaint shall be guilty of a Class V Misdemeanor.

OFFICER MUST REPORT VIOLATIONS: [53-197(2)]

Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the Nebraska Liquor Control Commission:

- a. Within thirty days after such offense is committed,
- b. Within thirty days after such sheriff, deputy sheriff, police officer, marshal, or deputy marshal is informed of such offense,
- c. Within thirty days after the conclusion of an ongoing police investigation, or
- d. Within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

PROOF OF AGE: [53-180.06]

To establish proof of age for purposes of buying or consuming alcohol, a person shall present or display (only) one of the following:

- a. A valid driver or operator's license
- b. Nebraska State ID card
- c. Military ID card
- d. Alien registration card
- e. Passport

CREATING OR ALTERING IDENTIFICATION FOR A MINOR:

1. Elements: [53.180.05(2)]

It is unlawful for any person to:

- a. Knowingly manufacture, create, or alter,
- b. Any form of identification,
- c. For the purpose of sale or delivery of such form of identification,
- d. To a person under the age of twenty-one years of age.

2. Parent Notification:

When the minor is arrested by a peace officer under this section, that peace officers agency shall make reasonable attempt to notify such minors parent or guardian.

3. Classification:

Class I Misdemeanor

MINOR MISREPRESENTING AGE:

1. Elements: [53-180.01]

It is unlawful for a minor:

- d. To obtain or attempt to obtain,
- e. Alcoholic liquor,
- f. By misrepresentation of age or any other method,
- g. In any tavern or other place where alcohol is sold.

2. Parent Notification:

When the minor is arrested by a peace officer, that peace officers agency shall make reasonable attempt to notify such

minors parent or guardian.

3. Classification:

Class III Misdemeanor

***PROCURRING ALCOHOLIC LIQUOR TO
MINORS OR INCOMPETENTS:***

1. Elements: [53-180]

It is unlawful for any person to:

- a. Sell, furnish, give away, exchange or deliver,
- b. Or permit the sale, gift, or procuring of,
- c. Any alcoholic liquors,
- d. To or for any minor under 21 years of age, or
- e. To or for any person who is mentally incompetent.

2. Parent Notification:

When the minor is arrested by a peace officer under this section, that peace officers agency shall make reasonable attempt to notify such minors parent or guardian.

3. Classification:

- Class I Misdemeanor
- Class IIIA Felony with a mandatory minimum of at least thirty days' imprisonment if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

MINOR IN POSSESSION OF ALCOHOL:

1. Elements: [53-180.02]

It is unlawful for any minor under twenty-one years of age to:

- a. Sell, dispense, consume, or have in his/her possession or physical control,
- b. Any alcoholic liquor,
- c. In any place.

2. Exceptions:

- A minor may consume, possess, or have physical control of alcoholic liquor as a part of a *bona fide* religious rite/ritual/ceremony or in his/her permanent place of residence [53-180.02];
 - Persons who are sixteen years old or older may legally carry alcoholic liquor from licensed establishments when accompanied by a person not a minor [53-168.06];
 - Persons who are sixteen years old or older may legally handle (but not sell or serve) alcoholic liquor containers and alcoholic liquor in the course of their employment [53-168.06];
 - Persons who are nineteen years old or older may legally serve or sell alcoholic liquor in the course of their employment [53-168.06].
3. **Local Authority:**
Counties, cities, and villages may pass local laws regarding transportation, consumption, or knowing possession or control of alcoholic liquor in a motor vehicle, by any person under twenty-one years of age.
4. **Parent Notification:**
When the minor is arrested by a peace officer, that peace officer's agency shall make reasonable attempt to notify such minor's parent or guardian.
5. **Classification:** [53-180.05]
- a. ***General Penalty for an offender older than 18:***
Class III Misdemeanor
 - b. ***Special Penalties for an offender younger than 18:***
The penalty for violation of section [53-180.02] by a person eighteen years of age or younger shall be as follows:
 - Class III Misdemeanor, and:
 - For the first offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for thirty days and require such person to attend alcohol

- education;
- For a second offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for ninety days, and require such person to complete twenty to forty hours of community service and to attend an alcohol education class;
- For a third or subsequent offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for twelve months and require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

PURCHASE AND IDENTIFICATION OF KEGS:

1. Elements: [53-167.02]

- a. Whenever a licensee sells a container of beer with a liquid capacity of 5 or more gallons or 18 and 92/100 or more liters
- b. The seller shall record the date of sale, the keg ID number, the purchaser's name and address, the number of the purchaser's driver's license, state ID. card, or military ID card (if a picture ID), together with the purchaser's signature.
- c. Such form shall be kept by the licensee for at least 6 months,
- d. At time of sale, the licensee shall affix a label (prescribed by the Liquor Control Comm.) with an ID number, on the keg. Said number shall be registered with the Commission.

2. Classification:

Class III misdemeanor

TAMPERING, ALTERING, OR REMOVING KEG I.D. NUMBER:

1. **Elements:** [53-167.03]
 - a. No person shall tamper, alter or remove a Keg ID number,
 - b. OR Have possession of a beer container with an altered or removed Keg identification number,
 - c. After such container has been sold at retail and taken from the licensed premises.
2. **Classification:**
Class III Misdemeanor

CONSUMPTION OF ALCOHOL ON PUBLIC PROPERTY:

1. **Elements:** [53-186]

It shall be unlawful for any person:

 - a. To consume alcoholic liquor,
 - b. Upon property owned or controlled by the state or any governmental subdivision,
 - c. Unless authorized by the governing authority.

CONSUMPTION OF ALCOHOL IN A MOTOR VEHICLE OR ON A PUBLIC PARKING AREA:

1. **Elements:** [60-6,211.08]

Unless authorized by a liquor license, it is unlawful to:

 - a. Consume an alcoholic beverage,
 - b. In a public parking area,
 - c. Or on any highway,
 - d. Or inside a motor vehicle while in a public parking area or on any highway.

OPEN ALCOHOL CONTAINERS IN VEHICLES:

1. **Elements:** [60-6,211.08]

It is unlawful for any person to:

 - a. Possess an open alcoholic beverage container,
 - a. Or consume an alcoholic beverage,

- b. In the passenger area of a motor vehicle,
- c. While the motor vehicle is located in a public parking area or on any highway.

2. Exceptions for Limousines and Charter Buses:

This section does not apply to passengers of a limousine or bus being used in a charter or special party service as defined by the Public Service Commission.

- The driver of the limousine or bus is prohibited from consuming alcoholic liquor;
- Alcoholic liquor may not be present in any area readily accessible to the driver while in the driver's seat, including any compartments.

3. Definitions:

Alcoholic beverage means:

- Beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor,
- Wine of not less than one-half of one percent of alcohol by volume, or Distilled spirits, which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process, produced.
- Alcoholic beverage does not include trace amounts not readily consumable as a beverage.

Highway means a road or street including the entire area within the right-of-way;

Limousine means a luxury vehicle used for prearranged passenger transportation on a dedicated basis at a premium fare with seating capacity between five and fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses.

Open alcoholic beverage container means any bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

CONSUMPTION OF LIQUOR ON PRIVATE PROPERTY OPEN TO THE PUBLIC; LICENSE REQUIRED:

1. Elements: [53-186.01]

It shall be unlawful for any person:

- a. To consume or allow the consumption of alcoholic liquor in any dance hall, restaurant, cafe, or club,
- b. Or any place open to the general public,
- c. Except as permitted by a license issued for such premises pursuant to the act.

2. Exception:

This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.

3. Classification:

- Class III Misdemeanor to consume alcohol in violation,
- Class IV Misdemeanor to allow the illegal consumption,
- Class II Misdemeanor to allow the illegal, unlicensed consumption for a second or subsequent offense.

*NOTE: Failure to produce a liquor license by a person who owns, operates, manages, or conducts a business or any place

open to the public produce shall constitute prima facie proof that a license has not been issued.

REMOVAL OF INTOXICATED PERSONS;

CIVIL PROTECTIVE CUSTODY: [53-1121]

- A law enforcement officer with power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property.
- Taking someone into civil protective custody is not an arrest.
- An officer who acts in compliance with this section shall be deemed to be acting in the course of official duties and shall not be criminally or civilly liable for such actions
- An officer removing an intoxicated person from public or quasi-public property shall make a *reasonable effort* to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury.
- Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors that have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals.
- If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, if necessary to preserve life or to prevent injury, and under no circumstances for longer than twenty-four hours.
- The placement of such person in civil protective custody shall be recorded at the facility or jail to which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

OFFENSES AGAINST ANIMALS
[28-1004 to 28-1017] & [54-901 to 54-912]

DEFINITIONS:

- **Animal** means any vertebrate member of the animal kingdom except man. It does not include an uncaptured wild creature;
- **Animal welfare practice** means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals;
- **Bear Baiting** means pitting of any animal against a bear;
- **Bovine** means a cow, an ox, or a bison;
- **Cockfighting** means pitting of a fowl against another;
- **Dogfighting** means pitting of a dog against another dog;
- **Equine** means a horse, pony, donkey, mule, hinny, or llama;
- **Humane killing** means destruction of an animal by a method that causes the animal a minimum of pain and suffering;
- **Law enforcement officer** means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances. It also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section [28-1012] while performing inspection activities;
- **Mutilation** means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;
- **Pitting** means bringing animals together in combat.
- **Police Animal** means a horse or dog owned or controlled by

the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer acting pursuant to his or her official authority.

- **Serious Injury or Illness** includes any injury or illness to any animal or livestock animal which creates a substantial risk of death or which causes prolonged impairment of health or prolonged loss or impairment of any bodily organ;
- **Repeated Beating** means intentional successive strikes to an animal by a person resulting in serious bodily injury or death;
- **Serious Injury Or Illness** includes any injury or illness to any animal or livestock animal which creates a substantial risk of death or causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the any bodily organ;
- **Torture** means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a licensed veterinarian or conduct that conforms to accepted veterinary practices.

ENFORCEMENT, WARRANT, AND SEIZURE: [28-1012]

- **Warrants**
An officer who believes an animal has been abandoned, cruelly neglected, or cruelly mistreated may seek a warrant to enter private property to inspect, care for, or impound the animal.
- **Citation**
An officer with reason to believe an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner under sections [29-422] to [29-429].
- **Seizure**
Any animal, equipment, device, or other property or things involved in a violation of section [28-1009] or [28-1010] are subject to seizure. Disposition is made as the court directs. Pet animals may be kept on the property of the person responsible

for such pet animal. Local rules may apply to the disposition of seized animals in a Metropolitan or Primary Class city.

- **Officer Liability**

Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

PENALTIES APPLY TO PARENTS OF A MINOR: [28-1015]

A parent or legal guardian with whom a minor child resides is subject to the penalties under [28-1008] to [28-1017], [28-1019], and [28-1020] if an animal owned by such child is abandoned or cruelly neglected.

HARASSMENT OF A POLICE ANIMAL:

1. Elements: [28-1009]

It is unlawful for any person to:

- (b) Knowingly and intentionally tease or harass a police animal in order to distract, agitate, or harm the police animal,
- (c) For the purpose of preventing such animal from performing its legitimate official duties.

2. Definition:

Police Animal means a horse or dog used by the State or any county, city, or village for the purpose of assisting a peace officer acting pursuant to his or her official authority.

3. Classification:

- Class IV Misdemeanor;
- Class IV Felony if the harassment is the proximate cause of the death of the police animal;
- A felony offender may be ordered not to own, possess, or reside with any animal for five to fifteen years;

VIOLENCE TO A SERVICE DOG:

1. Elements: [28-1009.01]

It shall be unlawful to Intentionally:

- a. Injure or harass a dog, or threaten or attempt the same,
- c. Knowing or with reason to believe the dog is:

- (1) A dog guide for a blind or visually impaired person,
- (2) A hearing aid dog for a the deaf or hearing impaired, or
- (3) A service dog for a physically limited person.

2. Classification:
Class III Misdemeanor

INTERFERENCE WITH A SERVICE DOG

1. Elements: [28-1009.01]

It shall be unlawful to:

- a. Intentionally impede or interfere with a dog, or threaten or attempt the same,
- b. Knowing or with reason to believe it is a dog guide for a blind or visually impaired person, a hearing aid dog, or a service dog for a physically limited person.

2. Classification:

Class III Misdemeanor

ANIMAL FIGHTING PROHIBITED

1. Elements: [28-1004 to 28-1006]

No person shall *knowingly*:

- a. Promote, engage in, or be employed at, or
- b. Knowingly and willingly be present at and witness as a spectator,
- c. To dogfighting, cock-fighting, bear baiting, or pitting an animal against another, or
- d. Receive money for the admission of another person to a place kept for such purpose, or
- e. Own, use, train, sell, or possess an animal for such purpose, or
- f. Permit any act as described to occur on any premises owned or controlled by him or her.

2. Enforcement & Seizure:

- a. It shall be the duty of the sheriff, a police officer, or the Nebraska State Patrol to make prompt investigation of and arrest for any violation
- b. Any animal, equipment, device, or other property or things involved in any violation of this act shall be subject to seizure,
 - Disposition may be made as is directed for contraband in section [29-820].

3. Exceptions:

This act does not change the authority of the Game and Parks Commission in Chapter 37, nor does it prohibit the training of dogs for any purpose not prohibited by law.

4. Classification and Enforcement:

Class IV Felony

- The animal shall be subject to seizure by law enforcement, and disposition shall be made by a court under [29-818].
- A felony offender may be ordered not to own, possess, or reside with any animal five to fifteen years. Violation of that court order is a Class I Misdemeanor.

ANIMAL FIGHTING PARAPHERNALIA; OWNERSHIP OR POSSESSION OF:

1. Elements: [28-1005.01]

No person shall knowingly or intentionally

- a. Own or possess animal fighting paraphernalia
- b. With the intent to commit a violation of animal fighting under section [28-1005].

2. Definitions:

- a. Animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section [28-1004].
- b. Animal fighting paraphernalia includes, but is not limited to, the following:
 - *A breaking stick*, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object,
 - A cat mill*, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other

small animal beyond the grasp of the dog;

- A *treadmill*, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;
- A *fighting pit*, which means a walled area designed to contain an animal fight;
- A *springpole*, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;
- A *heel*, which means any edged or pointed instrument designed to be attached to the leg of a fowl;
- A *boxing glove or muff*, which means a fitted protective covering for the spurs of a fowl; and
- Any other instrument commonly used in the furtherance of pitting an animal against another.

3. Exceptions:

Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in Nebraska.

4. Classification

Class I misdemeanor.

ABANDONMENT OF AN ANIMAL:

1. Elements: [28-1009]

It is unlawful for any person whether as owner or custodian:

- a. To leave any animal that is in one's care,
- b. For any length of time,
- c. Without making effective provision for food, water, or other care as is reasonably necessary for the animal's health.

2. Classification:

- Class I Misdemeanor
- Class IV Felony if the animal was abandoned

intentionally, knowingly, or recklessly so as to cause *serious injury or illness or death* of the animal.

- The animal shall be subject to seizure by law enforcement, and disposition shall be made by a court under [29-818].
- A felony offender may be ordered not to own, possess, or reside with any animal for at least five years, up to fifteen years. Violation of that court order is a Class I Misdemeanor.

CRUEL NEGLECT:

1. Elements: [28-1009]

It is unlawful for any person to:

- a. Fail to provide any animal that is in one's care, whether as owner or custodian,
- b. With food, water, or other care as is reasonably necessary for the animal's health.

2. Classification:

- Class I Misdemeanor;
- Class IV Felony if cruelly neglect is done intentionally, knowingly, or recklessly so as to cause *serious injury or illness or death* of the animal;
- The animal shall be subject to seizure by law enforcement, and disposition shall be made by a court under [29-818].
- A felony offender may be ordered not to own, possess, or reside with any animal for at least five years, up to fifteen years.

CRUEL MISTREATMENT:

1. Elements: [28-1009]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal.

2. Classification:

- Class I Misdemeanor for a first offense;

- Class IV Felony for a second or subsequent offense;
- Class IV Felony if cruel mistreatment involved the knowing and intentional torture, repeated beating, or mutilation of the animal;
- The animal shall be subject to seizure by law enforcement, and disposition shall be made by a court under [29-818].
- The offender may be ordered not to own, possess, or reside with any animal for five to fifteen years.

INDECENCY WITH AN ANIMAL:

****2013 Update***

1. Elements: [28-1010]

It is unlawful for any person:

- To subject an animal,
- To sexual penetration.

2. Definition:

Sexual penetration means:

- Sexual intercourse in its ordinary meaning, Cunnilingus, fellatio, anal intercourse, OR
- Any intrusion, however slight, of any part of the actor's or animal's body or any object manipulated by the actor into the genital or anal openings of the animal's body which can be reasonably construed as being for nonmedical or non-health purposes.
- Sexual penetration does not require emission of semen.

3. Classification:

Class III Misdemeanor

- The offender may be ordered not to own, possess, or reside with any animal for five to fifteen years.

SALE OF A PUPPY OR KITTEN UNDER SIX WEEKS OF AGE:

1. Elements: [28-1018]

- No person (other than an Animal Control Facility)
- Shall sell a puppy or kitten under six weeks of age
- Without its mother.

2. Classification:
Class V Misdemeanor

DOGS COLLAR REQUIRED: [54-605]

The owner of any dog shall securely place upon the neck of such dog a good and sufficient collar with a metallic plate inscribed with the name of such owner.

DOGS RUNNING AT LARGE WITHOUT A COLLAR: [54-607]

The owner of any dog:

- a. Running at large for ten days without a collar,
- b. Shall be fined up to twenty-five dollars.

DOGS RUNNING AT LARGE: [54-608]

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties:

- a. It is unlawful for any person or entity,
- b. To have any dog that is owned, kept, harbored or habitually allowed on that person or entity's property,
- c. To be at large.

*NOTE: A city of the first class is one with at least 100,000 people. Also note that counties and local jurisdictions are empowered and likely to have local restrictions on dogs running at large.

VIOLATION OF A COURT ORDER NOT TO OWN, POSSESS, OR RESIDE WITH ANY ANIMAL

1. Elements: 28-1019

- c. It is unlawful for any person subject to a court order not to own, possess, or reside with an animal,
- d. To violate such court order.

2. Classification:

- Class I Misdemeanor if defendant was convicted for felony animal fighting, abandonment, or cruel neglect and ordered

not to own, possess, or reside with any animal for between five and fifteen years.

- Class IV Misdemeanor if conviction was for misdemeanor animal fighting paraphernalia, cruel mistreatment, or indecency with an animal and defendant was ordered not to own, possess, or reside with any animal for up to five years.
3. Any animal involved in a violation of a court order is subject to seizure by law enforcement.
 4. This section doesn't apply to a person with written confirmation from a licensed physician that owning, possessing, or residing with an animal is essential to the health of such person.

THE LIVESTOCK ANIMAL WELFARE ACT

[54-901] to [54-912]

The Livestock Animal Welfare Act creates rules, definitions, exceptions, and violations for livestock animals. Many of the definitions for general animal offenses apply, but differences are noted throughout this section, where applicable.

- ***Livestock Animal*** means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry.

APPLICABILITY: [54-907]

The Livestock Animal Welfare Act shall not apply to:

- a. Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician that conforms to commonly accepted veterinary practices;
- b. Euthanasia of a livestock animal or livestock animals as conducted by the owner or by his or her agent or a veterinarian upon the owner's request;
- c. Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;
- d. Commonly accepted animal welfare practices with respect to livestock animals and commercial livestock operations,

- including their transport from one location to another and non-negligent actions taken by personnel or agents of the Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;
- e. Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts;
 - f. Commonly accepted animal training practices; and
 - g. Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

DUTY TO REPORT LIVESTOCK ABUSE: [54-908, 54-910]

Any employee of a governmental agency dealing with livestock animal control or and any licensed veterinarian or veterinary technician whose practice involves care of livestock animals:

- a. Shall make a report to the appropriate agency,
- b. When such person reasonably suspects a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated.
- c. Reporting party is immune from liability, except false statements,
- d. Failure to report may be an infraction [54-908].

ENFORCEMENT AND SEIZURE: [54-906] ****2013 Update***

Any officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may:

- a. Seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal, and
- b. Issue a citation to the owner.
- c. Any equipment, device, or other property or things involved in a violation of section [54-903] or [54-904] shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct,
- d. An officer acting under this section shall not be liable for damage to property not the result of the officer's negligence.

- e. Any livestock animal involved in a violation of a court order not to own or possess livestock shall be subject to seizure by law enforcement [54-909].
- f. Any livestock animal involved in a violation of section [54-903] or [54-904] shall be subject to seizure. Distribution or disposition shall be made under section [54-913] as the court may direct. Any livestock animal seized under this subsection may be kept by the law enforcement officer on the property of the owner or custodian of such livestock animal.
- g. In lieu of seizure, an officer may specify a signed custody agreement by which the owner or custodian may maintain custody of the livestock animal to provide care at their expense. A violation of the agreement may result in seizure of the animal.

*Note, Metropolitan and Primary Class cities may pass different seizure rules by local ordinance.

EUTHANIZING A LIVESTOCK ANIMAL [54-906(5)]:

An officer may euthanize or cause the euthanasia of a livestock animal seized or kept under [54-906] if it is severely emaciated, injured, disabled, or diseased past recovery for any useful purpose:

- a. Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices.
- b. The officer shall notify the owner or custodian prior to the euthanasia if practicable under the circumstances.
- c. An owner or custodian may request that a veterinarian of their choosing view the livestock animal and be present upon examination of the animal.

- d. No livestock animal shall be euthanized without reasonable accommodation to provide for the presence of the owner's or custodian's veterinarian when requested.
- e. However, attempted notifications shall not unduly delay euthanasia when necessary.
- f. The law enforcement officer may forgo euthanasia if the care of the livestock animal is placed with the owner's or custodian's veterinarian.

ABANDONMENT OF LIVESTOCK:

**2013 Update*

1. Elements: [54-903]

It is unlawful for any person:

- a. To leave any livestock animal that is in one's care, whether as owner *or custodian*,
- b. For any length of time,
- c. Without making effective provision for feed, water, or other care as is reasonably necessary for the animal's health.

Definition:

Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person..

3. Classification:

- Class I misdemeanor
- A misdemeanor offender may be ordered by the court such not to own or possess any livestock animal for up to five years after the date of conviction. Violation of that order is a Class IV Misdemeanor.
- Class IV Felony if the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal.
- A felony offender shall be ordered by the court not to own or possess any livestock animal for five to fifteen years. Violation of that order is a Class I Misdemeanor [54-909].

Violator is liable for expenses for care, impoundment, or disposal of the animal, and the court may order violator to reimburse such expenses [54-904)].

CRUEL MISTREATMENT OF LIVESTOCK:

1. Elements: [54-902], [54-903]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill or cause physical harm,
- c. To a livestock animal,
- d. In a manner not consistent with animal welfare practices.

2. Classification:

Class I misdemeanor for the first offense

- A misdemeanor offender may be ordered by the court such not to own or possess any livestock animal for up to five years after the date of conviction. Violation of that order is a Class IV Misdemeanor.

Class IV Felony for any subsequent offense

- Felony offender shall be ordered by the court not to own or possess any livestock animal for five to fifteen years.
- Violator is liable for expenses for care, impoundment, or disposal of the animal, and the court may order violator to reimburse such expenses [54-904)].

CRUEL NEGLECT OF A LIVESTOCK ANIMAL:

1. Elements: [54-902], [54-903]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill or cause physical harm,
- c. To a livestock animal,
- d. In a manner not consistent with animal welfare practices.

2. Classification:

a. Class I Misdemeanor

- The court may order the defendant not to own or

- possess any livestock animal for up to five years.
- b. Class IV Felony
- If the cruel neglect results in serious injury or illness or death of the livestock animal.
 - A felony offender shall be ordered by the court not to own/possess any livestock animal for five to fifteen years.
- c. Defendant is liable for expenses for care, impoundment, or disposal of the animal, and the court may order reimbursement of such expenses [54-904].

VIOLATION OF A COURT ORDER NOT TO POSSESS A LIVESTOCK ANIMAL:

- a. **Elements:** [54-909]
- e. It is unlawful to own or possess any livestock animal,
- f. While subject to a court order not to do so.
- b. **Classification:**
- Class IV Misdemeanor if the original offense was a misdemeanor.
 - Class I Misdemeanor if the original offense was a felony.
 - Any livestock animal involved in a violation of a court order shall be subject to seizure by law enforcement.

INDECENCY WITH A LIVESTOCK ANIMAL:

1. **Elements:** [54-904]
- It is unlawful for any person:
- a. To subject, a livestock animal,
- b. To sexual penetration.
2. **Definition:**
- Sexual penetration* has the same definition as that for indecency with other non-livestock animals.
3. **Classification:**
- Class III Misdemeanor

- Violator is liable for expenses for care, impoundment, or disposal of a livestock animal, and the court may order violator to reimburse such expenses [54-904)]

PROHIBITED ACTS RELATING TO EQUINE:

1. Elements: [54-911]

It is unlawful for any person to:

- a. Intentionally, by any means,
- b. Trip, cause to fall, lasso, or rope the legs of any equine,
- c. For the purpose of entertainment, sport, practice, or contest.

2. Classification:

Class I Misdemeanor

*NOTE: The acts prohibited by this section shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

PROHIBITED ACTS RELATING TO BOVINE:

1. Elements: [54-912]

It is unlawful to:

- a. Intentionally, by any means,
- b. Trip, cause to fall, or drag by its tail,
- c. Any bovine (cow, ox, or bison),
- d. For the purpose of entertainment, sport, practice, or contest.

2. Classification:

Class I misdemeanor.

*NOTE: The acts prohibited by this section shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

DANGEROUS DOGS:

[54-617 to 54-624]

DEFINITIONS:

- ***Animal control authority*** shall mean an entity (including a local law enforcement or other agency) authorized to enforce the animal control laws of a county, city, or village or this state;
- ***Animal control officer*** shall mean any individual authorized by an animal control authority for the purpose of enforcement of a law or ordinance relating to animals, and shall include any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

- ***Dangerous dog*** means a dog that, according to the records of an animal control authority:
 - a. Has killed a human being;
 - b. Has inflicted injury on a human being that requires medical treatment, But not if the injured person was tormenting, abusing, or assaulting the dog at the time of the injury or has previously been observed or reported to have done so.
 - c. Has killed a domestic animal without provocation; or
 - d. Has been previously been determined to be a potentially dangerous dog by an animal control authority, the owner has received notice of such determination, and the dog inflicts an injury (not necessarily requiring medical treatment) or threatens the safety of a human being or domestic animal. But not if the injury, damage, or threat was sustained by someone who was tormenting, abusing, or assaulting the dog or has been observed or reported to have done so in the past, or was committing a willful trespass, other crime, or tort upon the property of the owner of the dog.
 - e. A police animal cannot be found to be a dangerous dog under this section.
- ***Domestic animal*** shall mean a cat, a dog, or livestock;
- ***Livestock*** includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit;
- ***Medical treatment*** means treatment administered by a physician or other licensed health care professional that results in sutress, surgery, or treatment for a broken bone;
- ***Owner*** shall mean any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog;
- ***Potentially dangerous dog*** shall mean
 - a. Any dog that when unprovoked:

- (1) Inflicts injury on a person that does not require medical treatment or injures a domestic animal or
 - (2) Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or
- b. Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals;

DANGEROUS DOG VIOLATIONS: [54-617 et seq.]

A dangerous dog that has been declared as such shall:

- Be securely confined when unattended on the owner's property;
- Not be kept or harbored by any person on property under that person's charge or control without such dog being confined so as to protect the public;
- Not be permitted by the owner to go beyond the property of the owner unless the dog is restrained securely by a chain or leash,
- Be spayed or neutered and implanted with a microchip identification number;
- Not be permitted by the owner to be transported to another county, city, or village in Nebraska, unless being permanently relocated and only then with written permission from the animal control authority in both locations;
- Classification is a Class IV misdemeanor for most violations.

DANGEROUS DOG ATTACKS ON HUMANS:

2. Elements: [54-622.01]

The owner of a dangerous dog violates the law when:

- a. The dangerous dog inflicts a *serious bodily injury*,
- b. On a human being.

3. Classification:

- Class I Misdemeanor for the first offense;

- Class IV Felony for a second or subsequent offense, whether or not the same dangerous dog is involved.

*NOTE: It is a defense to this section that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

CONFISCATION OF A DANGEROUS DOG:

- a. If a dangerous dog attacks or bites a person human being or another domestic animal, the dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length. Upon conviction, the dog shall thereafter be destroyed in an expeditious and humane manner.
- b. Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of sections [54-617] to [54-624] (no attack or bite).
- c. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog or for the lawful destruction of the dog.

SECTION III
VEHICLES AND TRAFFIC

OPERATORS LICENSE VIOLATIONS:

OPERATOR'S LICENSE DEFINED: [60-474]

An operator's or driver's license means any license or permit to operate a motor vehicle issued under the laws of NE, including:

- a. Any replacement or duplicate license or instruction permit;
- b. The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- c. The privilege of person who is not a resident of Nebraska to operate or use a motor vehicle in this state;
- d. An employment driving permit issued as provided by sections [60-4,129] and [60-4,130]; and
- e. A hardship driving permit issued as provided by sections [60-4,130.01] and [60-4,130.02].

OPERATOR'S LICENSE REQUIRED: [60-484]

Unless otherwise provided, the operator of a motor vehicle upon alleys or highways in Nebraska must have an operator's license.

- A resident of Nebraska may not operate a motor vehicle until the person has obtained an operator's license for that purpose.
- A nonresident that moves to Nebraska is required to obtain a NE operator's license after thirty days of continuous residence in this state, unless granted further immunity noted below.
- A nonresident must be duly licensed in the state of his or her residence, and any motor vehicle must be properly registered in such state to lawfully operate a motor vehicle in NE.

NONRESIDENT LICENSE IMMUNITY: [60-488]

All nonresident members of the military, their spouses/dependants, and full time college students don't need a NE driver's license, so long as they are licensed in their state of residence. Exemption is also granted to temporary agriculture workers who are certified by the Dept. of Labor to work in Nebraska for no more than 60 days.

DUTY TO CARRY AND PRESENT LICENSE:

1. Elements: [60-489]

The operator of a motor vehicle shall:

- a. Carry an operator's license at all times when operating on a highway, and
- b. Present such license or proof of ownership of the same,
- c. Upon lawful demand by any officer of the law.

2. Classification: [60-4111]

Class III Misdemeanor

CLASSIFICATION OF OPERATORS LICENSES: [60-480]

1. Motor Vehicles (Class O):

Authorizes the holder to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle.

a. **Age Limit:**

- The driver must be at least 17 years of age.
- Anyone under 18 must have first held a provisional operator's license for at least 12 months and not have accumulated three or more points during that time.

b. **Expiration:**

An operator's expires on the licensee's birthday in the fifth year after issuance (or on his/her 21st birthday).

2. Motorcycles (Class M): [60-4127]

Required for anyone operating a motorcycle in Nebraska.

3. Commercial (CDL)

Authorizes the operation of commercial motor vehicles or any motor vehicle (except a motorcycle) on highways;

- A *Commercial Vehicle* is a motor vehicle used or designed to transport-passengers or property (a) With a gross vehicle weight rating of more than 26,000 lbs., OR (b) that is designed to transport 16 or more passengers including the

driver, or (c) that is carrying hazardous materials and required to be placarded pursuant to Section [75-364].

- Driver's of commercial vehicles are prohibited from texting under [60-6,179.01].

4. School Permit (SCP): [60-4,124]

- a. Age limit: At least 14 years, two months of age, younger than 16 years and three months of age,
- b. Must first have an LPD learner's permit for two months,
- c. Must reside outside a metropolitan, primary or first class city or attend school located outside the same.
- d. Home must be at least one and a half miles from school,
- e. May only be used to driving themselves and any family member who resides with such person to attend school or school related activities (direct route only),
- f. May also drive under personal supervision of a licensed operator who is at least 21 years old,
- g. The use of any *Interactive Wireless Communication Device* (voice or data) while driving is prohibited.

5. Farm Permit (FMP): [60-4126]

- a. Must be at least 13 years of age if living on the farm, age 14 for anyone not living on a farm but working on a farm,
- b. Authorizes the operation of motorized farm implements or minitrucks upon public highways and state roads.
- c. A farm permit need not be carried by the operator, but must be produced within 24 hours upon demand of an officer (60-489).

6. Commercial Learner's Permit (LPC): [60-4141]

A permit issued in conjunction with a Class O or CDL that authorizes the operation of a commercial vehicle for learning purposes when accompanied by a person at least twenty-one years of age who is a licensed commercial driver.

- 7. LPD Learner's Permit:** [60-4123]
A permit to operate a motor vehicle (but not a commercial vehicle) for learning purposes:
- Must be at least 15 years of age,
 - Valid twelve months from issue,
 - Must be accompanied at all times by licensed operator who is at least twenty-one years old and actually occupying seat next to driver
 - Use of any *Interactive Wireless Communication Device* (voice or data) is prohibited while driving.
- 8. School Learner's Permit:** [60-4124]
A permit to operate a motor vehicle (but not a commercial vehicle) while learning to drive in preparation to apply for a school permit:
- Must be between 14 years two months and 16 years old,
 - Valid for three months,
 - Must be accompanied at all times by a licensed operator over 21 years of age.
 - The use of any *interactive wireless communication device* (voice or data) is prohibited while driving.
- 9. Provisional Operator's Permits (POP):** [60-4120.01]:
A driver who holds a provisional operators permit is subject to several driving restrictions.
- The holder of a POP shall operate a motor vehicle only between the hours of 6:00 a.m. and 12:00 midnight, unless:
 - The driver is en route to/from his/her residence, place of employment, or a school activity, OR
 - Is accompanied by a parent, guardian, or adult at least 21 years of age, who has a current operator's license.
 - For the first six months a POP holder shall not have more than one passenger who is under nineteen years of age and is not an immediate family member.

- e. POP driver shall not use any type of *interactive wireless communication device* (voice or data) while driving.
- f. Enforcement is a secondary action only and the driver must also be cited or charged with a violation of some other law.
- g. Violation of this section is an infraction.

***EVALUATION OF AN INCOMPETENT DRIVER'S
OPERATING PRIVILEGE:*** [60-4,118]

A law enforcement officer may request the Director of DMV to evaluate the driving privilege of any person that is believed to be physically or mentally incompetent to operate a motor vehicle safely.

- Any such request by an officer shall include a written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

***USE OF ANOTHER PERSON'S OPERATOR'S LICENSE OR
IDENTIFICATION:***

1. Elements: [60-491]

It is unlawful for any person to:

- a. Lend his or her operator's license or state identification card to any person or knowingly permit the use thereof by another;
- b. OR to display or represent as one's own any operator's license or state identification card not issued to him or her by the State of Nebraska or any other state;
- c. OR permit any unlawful use of an operator's license or state identification card issued to him or her by the State of Nebraska or any other state;

2. Classification:

Class III Misdemeanor

FAKE LICENSE OR IDENTIFICATION, POSSESSION:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Display or cause or permit to be displayed, or have in his or her possession,
- b. any fictitious, or fraudulently altered operator's license or state identification card issued by Nebraska or any other state.

2. Classification:

Class III Misdemeanor

FAKE LICENSE OR IDENTIFICATION, MANUFACTURING:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Manufacture any fraudulent state identification card,
- b. Whether of the State of Nebraska or any other state.

2. Classification:

Class III Misdemeanor

ALLOWING AN UNAUTHORIZED PERSON TO DRIVE:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Cause or knowingly permit his or her child or ward under the age of sixteen years to drive a motor vehicle upon any highway when such minor is not authorized by or is in violation of the Motor Vehicle Operator's License Act;
- b. To authorize or knowingly permit a motor vehicle owned by him or her or under his or her control to be driven upon any highway by any person who is not authorized under or is in violation of the Motor Vehicle Operator's License Act.

2. Classification:

Class III Misdemeanor

OTHER DRIVER'S LICENSE VIOLATIONS:

1. Elements: [60-491]

It shall be unlawful for any person:

- To fail or refuse to surrender a suspended, revoked, or canceled license or state id upon demand of the DMV;
- To use a false or fictitious name in applying for an operator's license or state identification card or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in applying for an operator's license or state identification card;
- To do any act forbidden or fail to perform any act required by the Motor Vehicle Operator's License Act.

2. Classification: [60-4111]

Class III Misdemeanor

**DRIVING WHILE SUSPENDED, REVOKED,
OR IMPOUNDED:**

GENERALLY:

The privilege to operate a motor vehicle in this state is subject to being suspended, revoked, or impounded by the DMV or a court. Each of those three conditions has different meanings, penalties for violation, and different possibilities to obtain a permit to continue driving for certain purposes.

- There is a tendency, even among judges, to mix up the terminology among suspended, revoked, and impounded; but each term has its own legal significance and associated offense and penalty.
- The term “license” is used synonymously with the general privilege to drive, and it does not matter whether a person ever had a valid operator’s license as to whether that person may become suspended, revoked, or impounded.
- A particular driver may actually be suspended, revoked, and impounded at the same time.

DEFINITIONS:

- ***Suspension*** of operator's license means the *temporary* withdrawal of a person's operator's license by formal action of DMV. A suspended driver is typically eligible for reinstatement and can reinstate upon compliance with all conditions for reinstatement. [60-476.02].
- ***Revocation*** of operator's license shall mean the termination by a court of competent jurisdiction or by formal action of the Department of Motor Vehicles of a person's operator's license, which termination shall not be subject to renewal or restoration. Application for reinstatement of eligibility for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in the statute providing for revocation. [60-476.01]

- **Impoundment** of operator's license means the seizure and holding of a person's operator's license by the court pursuant to a court order requiring such person not to operate a motor vehicle for a specified period of time when the court has not ordered a revocation of the operator's license. [60-470.01].

DRIVING WHILE SUSPENDED:

1. Elements: [60-4108(2)]

It is unlawful for any person to operate a motor vehicle:

- a. During any period that his/her operator's license has been suspended; OR
- b. After a period of revocation or impoundment but before issuance of a new license.

2. Classification:

- a. Class III Misdemeanor and the court may revoke such person's operator's license for one year from the date ordered by the court,
- b. But, if the person at the time of sentencing shows proof of reinstatement, issuance of a new license, or proof of return of the impounded license, the person shall only be fined to a maximum of one hundred dollars.

***MISDEMEANOR DRIVING WHILE REVOKED
OR IMPOUNDED:***

1. Elements: [60-4108(1)]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. During any period that he or she is:
 - (1) Subject to a court order not to operate any motor vehicle for any purpose, OR
 - (2) Subject to an order of revocation or impoundment pursuant to conviction of any law in Nebraska (other than those offenses listed in [60-6197.06]), OR
 - (3) Subject to by an order of revocation or impoundment

of any court, OR

- (4) Subject to an order of revocation or impoundment by an administrative order of the DMV (other than a point revocation, which is a separate offense).

2. Classification: [60-4108(1)]

- a. Class II Misdemeanor for a first offense and the court shall order such person's operator's license revoked for one year,
- b. Class II Misdemeanor for a second or third offense and the court shall order such person's operator's license revoked for two years,
- c. Class I Misdemeanor for a fourth or subsequent offense and the court shall order such person's operator's license revoked for two years,

*Note: Driving while revoked may be a felony if the revocation is based on an offense listed in [60-6197.06] or without an interlock device while subject to an interlock order of either the DMV or a court – see [60-6211.11].

DRIVING WHILE REVOKED – POINT REVOCATION:

1. Elements: [60-4186]

It is unlawful for any person to:

- a. Operate a motor vehicle on the public highways
- b. During a period of revocation for points [4182] to [60-4186];
- c. Except that a motor vehicle other than a commercial motor vehicle may be operated under an employment driving permit or a medical hardship driving permit.

2. Classification:

Class III Misdemeanor

FELONY DRIVING WHILE REVOKED OR IMPOUNDED:

1. Elements: [60-6197.06].

Unless authorized by an Interlock Permit, it is unlawful to:

- a. Operate a motor vehicle,
 - b. On the highways or streets,
 - c. While his or operator's license has been revoked for any of the following violations:
 - Motor Vehicle Homicide,
 - Leaving the Scene of an Injury/Death Accident,
 - DUI 2nd Aggravated,
 - DUI 3rd, 4th, 5th, or Subsequent Offense (whether aggravated or not),
 - Refusal of a Chemical Test by a person with one or more prior convictions for DUI or Refusal, or
 - DUI with a serious bodily injury.
- 2. Classification:** [60-6197.06].
- a. Class IV Felony and the court will also order a fifteen year revocation.
 - b. Class III Felony for a second or subsequent offense,
 - c. For a second or subsequent offense if the driver was within a period of revocation for a refusing a chemical test third or subsequent offense.

*Note that the courts have held that this type of driving while revoked felony does not apply to the holder of an interlock permit, even if the driver does not have an interlock device installed. But, driving without an interlock device may be a felony under 60-6211.11] – see interlock permits below.

***POSSESSION OF A REVOKED, SUSPENDED, OR
IMPOUNDED LICENSE OR ID CARD:***

- 1. Elements:** [60-491]
- It is unlawful for any person to:
- a. Possess, display, or cause or permit to be displayed,
 - b. Any canceled, revoked, suspended, impounded operator's license or state identification card issued by any state.
- 2. Classification:**

***SEIZURE OF A VEHICLE OPERATED BY A SUSPENDED,
REVOKED, OR IMPOUNDED DRIVER:***

Seizure and Impound Authorized: [60-4110(1)]

The motor vehicle *may* be seized by police and impounded at the expense of the owner of the motor vehicle (regardless of who that owner is), upon the arrest of a driver who is currently suspended, revoked, or impounded for any of the following reasons:

- (1) A conviction for DUI [60-6196],
- (2) A conviction for Refusal of a Chemical Test [60-6197] or [60-211.02],
- (3) A conviction of an .02 Violation for Minors [60-211.01], or
- (4) By an order of any court or the DMV.

Seizure and Impound Required: [60-4110(1)]

The motor vehicle shall be impounded for not less than ten days or more than thirty days if the operator is currently suspended, revoked, or impounded for any of the following reasons:

- (4) An Administrative License Revocation (ALR) under [60-498.01], [60-498.02],
- (5) A DUI conviction [60-6,196],
- (6) A conviction for refusal to submit to a chemical test [60-6,197] or [60-6,211.02],
- (7) A conviction for an .02 violation for minors [60-6,211.01], or
- (8) A conviction for driving while revoked or impounded 4th or subsequent offense under [60-4108(1)(c)].

Impounding Restrictions:

- A motor vehicle impounded under this section may not be impounded for longer than thirty days.
- Any person who, at the direction of a peace officer, tows and stores a motor vehicle pursuant to this section shall have a lien

upon the vehicle for reasonable towing and storage charges and has the right to retain the vehicle until such charges are paid.

Releasing an Impounded Vehicle: [60-4110(2)]

- A court may order the release of a vehicle seized under this section upon a showing by the owner that the vehicle is essential to the owner's livelihood.
- A seized vehicle must be released to a lienholder who is lawfully foreclosing on the vehicle to satisfy the lien.
- A vehicle must be released if it is owned by a leasing or rental company and the impounding law enforcement agency shall immediately contact the company and inform it that the motor vehicle is available for the company to take possession.

INTERLOCK AND OTHER DRIVING PERMITS:

INTERLOCK DRIVERS PERMITS: [60-498.02] *2013 Update

A person with an interlock permit is allowed to operate a motor vehicle that is equipped with an interlock device.

- An interlock permit is never valid for commercial vehicles.
- Persons under 18 years of age are not eligible for an interlock permit for a DUI related revocation – [60-498.01(11)].
- Only the holder of a Class O or Class M operator's license is eligible for an ignition interlock permit – [60-4118.06(3)(b)]..

VIOLATION OF AN INTERLOCK PERMIT:

1. Elements: [60-6211.11(2)]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. That is equipped with an ignition interlock device,
- c. In violation of the requirements of the order of the court or the DMV under which the device was installed.

2. Classification:

Class III Misdemeanor

DRIVING WITHOUT AN INTERLOCK DEVICE:

1. **Elements:** [60-6211.11(1)]
It is unlawful for any person to:
 - a. Operate a motor vehicle,
 - b. That is not equipped with an ignition interlock device,
 - c. In violation of an order of a court or the DMV.
2. **Classification:**
Class IV Felony

TAMPERING WITH AN INTERLOCK DEVICE:

1. **Elements:** [60-6211.11(1)]
It is unlawful for any person to:
 - a. Tamper with or circumvents an ignition interlock device,
 - b. Installed under an order of a court or the DMV,
 - c. While the order is in effect.
2. **Classification:**
Class IV Felony

BOARD OF PARDONS INTERLOCK ORDER VIOLATIONS:

1. **Elements:** [83-1127.02]
It is unlawful for any person to:
 - a. Operate a motor vehicle upon the highways of this state;
 - b. Without an ignition interlock device approved by DMV;
 - c. Or with such an ignition interlock device that has been disabled, bypassed, or altered in any way;
 - d. Or with such an ignition interlock device but without an ignition interlock permit;
 - e. While restricted to driving only with an ignition interlock device by the Board of Pardons.
2. **Classification:**
Class IV Felony and the court shall order a fifteen year revocation.

EMPLOYMENT DRIVING PERMITS: [60-4,129]

Any person whose operator's license is revoked under section [60-4,183] or [60-4,186] (points) or suspended under section [43-3318] (child support) may be eligible for an employment driving permit to operate a motor vehicle.

- If granted, an employment allows a person to operate any motor vehicle, except a commercial motor vehicle only under the following circumstances, and the permit shall indicate for which purposes the permit was issued:
 - (1) From his or her residence to his or her place of employment and return; and
 - (2) During the normal course of employment if the use of a motor vehicle is necessary in the course of such employment.
- It is unlawful to operate any motor vehicle for a purpose other than an employment-driving permit allows, and violation of such permit terms is a Class IV Misdemeanor.
- Upon conviction, the permit will be revoked.

MEDICAL HARDSHIP DRIVERS PERMITS: [60-4,130.01]

Any person whose license or privilege to operate a motor vehicle is *revoked for points* may be eligible for a medical hardship driving permit, valid for a period of ninety days.

- If granted, the person may legally operate a motor vehicle from his or her residence or place of employment to a hospital, clinic, doctor's office, or similar location and return.
- The permit will indicate the legal purposes it may be used for.
- The operation of a motor vehicle by the holder of a medical hardship driving permit, except as provided in this section, is a Class IV Misdemeanor.
- The permit will be revoked by DMV for any moving traffic offense.
- A medical hardship permit may not be used to operate a commercial motor vehicle.

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SPEEDING VIOLATIONS:

BASIC RULE FOR SPEED: [60-6,185]

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

- A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

MINIMUM SPEED LIMITS: [60-6,193]

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

- On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions.
- The minimum speed of forty miles per hour may be altered by the Department of Roads or local authorities on freeways under their respective jurisdictions.
- Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel on any other roadway where minimum speed limits of twenty miles per hour or more are posted.
- Any minimum speed limit that is imposed under subsection shall not be effective until appropriate and adequate signs are erected

along the roadway.

- On any freeway, or other highway providing for two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side and at the same speed while in adjacent lanes. This subsection shall not be construed to prevent vehicles from traveling side by side in adjacent lanes because of congested traffic conditions.

MAXIMUM SPEED LIMITS: [60-6,186]

Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

- The maximum speed limits established in this section may be reduced by the Department of Roads or by local authorities pursuant to section [60-6,188] or [60-6,190].
- The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits.
- The default maximum speed limits are as follows:
 - a. Twenty-five miles per hour in any residential district;
 - b. Twenty miles per hour in any business district;
 - c. Fifty-miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;
 - d. Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;
 - e. Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Roads may authorize a speed limit five miles per hour greater;
 - f. Sixty-five miles per hour upon an expressway that is part of the state highway system;
 - g. Sixty-five miles per hour upon a freeway that is part of the

- state highway system but not part of the National System of Interstate and Defense Highways;
- h. Seventy-five miles per hour upon (most of) the National System of Interstate and Defense Highways;
 - i. Sixty miles per hour for any portion of the National System of Interstate and Defense Highways in Douglas County, Interstate 180 in Lancaster County, and Interstate 129 in Dakota County.

SPEEDING PENALTIES: [60-682.01]

Any person who operates a vehicle in violation of any authorized maximum speed limit is guilty of a traffic infraction and upon conviction shall be fined as follows:

MPH OVER SPEED LIMIT:	FINE:
1 to 5 MPH	\$10
6 to 10 MPH	\$25
11 to 15 MPH	\$75
16 to 20 MPH	\$125
21 to 35 MPH	\$200
Over 35 MPH	\$300
Note: There are special rules for construction and school zone speed limits and penalties as noted below.	

CONSTRUCTION SPEED ZONES: [60-6,188]

The authorized engineer for a state, county, municipal, or local jurisdiction may establish maximum speed limit through any maintenance, repair, or construction zone.

- Such speed limits shall take effect only after appropriate signs giving notice of the speed limit are erected or displayed in a conspicuous place in advance of the zone.
- The Speed limit through any highway maintenance, repair, or construction zone may be increased in increments of five miles per hour if the speed set does not exceed the maximum speed

- limits.
- The Department of Roads shall post signs in maintenance, repair, or construction zones stating that the fine for exceeding the posted speed limit in such zones is doubled.
- The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.
- Construction zone speeding fines are only doubled within such portion of a highway where road construction workers are present.

ISSUING A SPEEDING CITATION:

The driver of any motor vehicle that is exceeding the maximum speed limit may be apprehended only if:

- a. The vehicle's speed has been measured by use of a speed measurement device, according the foundation protocol set out in section [60-6,192],
- b. The apprehending officer is in uniform and displays his or her badge of authority,
- c. The apprehending officer has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device or has received a radio message from another officer who has observed the speed recorded,
- d. Such a radio message must be dispatched immediately after the speed of the motor vehicle was recorded and include a description of the vehicle and its recorded speed,

SPEED MEASUREMENT DEVICES: [60-6,192]

A driver may not be cited for speeding unless the officer's visual observation of the vehicle's speed is corroborated by a radio microwave, mechanical, or electronic speed measurement device.

- Before the prosecutor may offer in evidence the results of a speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:
 - a. The device was in proper working order at the time of conducting the measurement;
 - b. The device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;
 - c. The person operating the device and interpreting such measurement was qualified by training and experience to properly test and operate it; and
 - d. The operator conducted external tests of accuracy upon the device, within a reasonable time both prior to and subsequent to the citation being issued, and the device was found to be in proper working order.

*NOTE: The summons or notice to appear shall specify the speed the person cited is alleged to have been driving.

SPECIAL SPEED LIMIT FOR TOWED

MOTOR HOMES: [60-6,187]

No person shall operate any motor vehicle when towing mobile home at a rate of speed in excess of fifty miles per hour.

SPECIAL SPEED LIMIT FOR

MOTOR-DRIVEN CYCLES: [60-6,187]

Thirty-five mph upon a roadway at nighttime unless equipped with:

- a. A headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead;
- b. And with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear.
- c. A ***Motor-driven cycle*** shall mean every motorcycle including every motor scooter, with a motor that produces not to exceed

five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached. Motor-driven cycle shall not include an electric personal assistive mobility device.

SCHOOL CROSSING ZONES:

1. Elements:

It is unlawful for any person operating a motor vehicle:

- a. To overtake and pass another vehicle,
- b. In a school crossing zone,
- c. On a roadway that has only one lane of traffic in each direction.

2. Definitions:

- ***School crossing zone*** means the area or a roadway designated as such to the public by the Department of Roads or any county, city, or village by a sign or traffic control device.
- A school crossing zone starts at the location of the first sign or traffic sign or traffic control device identifying the zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

3. Classification:

- a. The fines for speeding are doubled if the violation occurs within a school crossing zone.
- b. Other violation of this section is a traffic infraction with fines of up to \$200 for a first offense, and between \$200 and \$400 for a second or subsequent offense.

RACING ON HIGHWAYS:

1. Elements: [60-6,195]

No person shall drive any vehicle on any highway:

- a. In any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration, or for the purpose of making a speed record,

- b. And no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

2. Definitions:

- **Drag Race** means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle(s) within a certain distance or time limit;
- **Racing** means one or more vehicles attempting to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

3. Classification:

Class II Misdemeanor

RADAR TRANSMISSION DEVICE PROHIBITED:

1. Elements: [60-6274] to [60-6277]

It is unlawful for any person to:

- a. Operate or possess any radar transmission device,
- b. While operating a motor vehicle on any road, street, highway, or interstate highway in Nebraska.

2. Exceptions:

This act does not apply to a device used by law enforcement officials for official duties or devices licensed by the FCC.

3. Definitions:

- **Radar Transmission Device** means any mechanism designed to interfere with radio microwaves (radar) used by law enforcement to measure the speed of a motor vehicle
- **Possession** means to have the device in a motor vehicle, connected to a power source and accessible to any person

in the vehicle while in motion. Such device can only legally be kept in a trunk, compartment, or other place not accessible to a person in the vehicle.

4. Classification:

Class IIIA Misdemeanor

- The device shall be seized and disposed of as contraband pursuant to [29-820].

ALL-TERRAIN, UTILITY VEHICLES, MINITRUCKS, LOW-SPEED VEHICLES, & GOLF CAR VEHICLES:

DEFINITIONS: [60-6,355]

- **All-Terrain Vehicle (ATV)** shall mean any motorized off-highway vehicle that meets ALL of the following criteria:
 - a. Is fifty inches or less in width,
 - b. Has a dry weight of nine hundred pounds or less,
 - c. Travels on three or more low-pressure tires,
 - d. Is designed for operation with no passengers or is specifically designed by the original manufacturer for the operator and one passenger,
 - e. Has a seat/saddle designed to be straddled by the operator,
 - f. Has handlebars or other assembly for steering control.
- **Controlled-Access Highway** [60-615] means a highway with no legal right of access or egress except as determined by the public authority with jurisdiction over it;
- **Golf Car Vehicle** means a vehicle designed and manufactured for sporting and recreation on a golf course, with the following:
 - a. Has at least four wheels,
 - b. Maximum ground speed of less than twenty miles per hour,
 - c. Maximum payload capacity of 1,200 pounds,
 - d. Maximum gross vehicle weight of 2,500 pounds,
 - e. Maximum passenger capacity of four persons.

- **Highway** [60-624] shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;
- **Low-speed vehicle** is defined at [60-628] to mean a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than 3000, and (c) that complies with 49 C.F.R. part 571, as such part existed on 1-1-2011;
- **Minitruck** means a vehicle that meets ALL of the following:
 - a. Is powered by an internal combustion engine with a piston or rotor displacement of 1,500 cubic centimeters or less,
 - b. Is 67 inches or less in width,
 - c. Has a dry weight of 4,200 pounds or less,
 - d. Travels on four or more tires,
 - e. Has a top speed of approximately fifty-five miles per hour,
 - f. Is equipped with a bed or compartment for hauling,
 - g. Has an enclosed passenger cab,
 - h. Has headlights, taillights, turn signals, windshield wipers, a rearview mirror, and an occupant protection system, and
 - i. Has a four-speed, five-speed, or automatic transmission.
- **Utility-Type Vehicle (UTV)** means any motorized off-highway vehicle that meets ALL of the following criteria:
 - a. Is not less than 48 inches nor more than 74 inches wide,
 - b. Is not more than 180 inches long, including the bumper,
 - c. Has a dry weight between 900 and 2000 pounds,
 - d. Travels on four or more low-pressure tires, and
 - e. Has a steering wheel and bench or bucket-type seating, designed for at least two people to sit side-by-side.

*NOTE: The term *utility-type vehicle* does not include golf car vehicles or low-speed vehicles.

ATV AND UTV OPERATION PROHIBITED:

An all-terrain vehicle shall not be operated on any:

- a. Highway *outside* of a city or village (unless such use is incidental for *agricultural purposes*);
- b. Controlled-access highway with more than 2 marked traffic lanes;
- c. Crossing of any controlled-access hwy with more than two marked traffic lanes.

ATV OR UTV OPERATION ALLOWED:

An all-terrain vehicle may be operated in accordance with the operating requirements if:

- a. Outside *a city or village* for agricultural purposes,
- b. Within a city or village if authorized by local authority

ATV OR UTV OPERATION ON A HIGHWAY: [60-6356(3)]

Authorized use of an ATV or UTV is subject to several restrictions:

- Operation only between the hours of sunrise and sunset;
- The operator must have a valid Class O license or farm permit as provided in section [60-4,126];
- The operator shall have liability insurance coverage for the ATV or UTV and shall provide proof of the same to any peace officer requesting such proof within five days of such a request;
- An ATV or UTV shall not exceed thirty miles per hour;
- The headlight and taillight of the vehicle shall be on;
- The vehicle must be equipped with a bicycle safety flag attached to the rear, extending at least five feet above ground;
- The bicycle safety flag shall be triangular shape, at least thirty square inches area, and shall be day-glow in color.

*NOTE: Cities and Villages may place additional restrictions for ATV or UTV use.

EXCEPTIONS TO ATV AND UTV USE RESTRICTIONS:

The above-noted restrictions do not apply to ATV or UTV operation on highways under the following circumstances:

- a. An ATV or UTV in an authorized parade;
- b. An ATV or UTV crossing a highway if the following are true:
 - The crossing is made at an angle of approx. 90 degrees to the direction of the highway and where no obstruction prevents a quick and safe crossing;
 - The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;
 - The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
 - In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and
 - Both the headlight and taillight of the vehicle are on.
- c. Electric Utility Personnel that are operating outside of the corporate limits of a municipality may operate an ATV or UTV after sunset within the course of employment, but are subject to the other requirements.

EQUIPMENT REQUIRED FOR ATV OR UTV:

1. Required Equipment: [60-6,358]

Every all-terrain vehicle and utility-type vehicle shall be equipped with ALL of the following:

- a. A brake system maintained in good operating condition;
- b. An adequate muffler system in good working condition; &
- c. A United States Forest Service qualified spark arrester.

2. Prohibited Modifications: [60-6,359]

No person shall equip or operate an ATV or UTV with:

- a. An exhaust system cutout, bypass, or similar device;
- b. A spark arrester removed or modified except for use in closed-course competition events.

*NOTE: An ATV or UTV operated at night or when visibility is reduced due to insufficient light or unfavorable atmospheric conditions shall display a lighted headlight and taillight – see [60-6357]

ATV OR UTV INJURY ACCIDENT REPORTS: [60-6,361]

The operator of an ATV or UTV involved in an accident:

- a. Shall report any accident involving death or an injury to any person that requires treatment by a physician.
- b. Reporting is done in the same manner as [60-699],
- c. Failure to report the accident is a Class IV Misdemeanor.

ABANDONED ATV, UTILITY VEHICLE, OR MINIBIKE:

1. Elements: [60-1907]

An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle if:

- a. Left unattended for more than twenty-four hours on any public property, except where parking is legally permitted;
- b. Left unattended for more than forty-eight hours on public property where parking is legally permitted, but after the parking of such vehicle has become illegal;
- c. Left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;
- d. Left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section [60-1903.01]; or
- e. Removed from private property by a municipality pursuant to a municipal ordinance.

MINITRUCK RESTRICTIONS: [60-6,379]

- A minitruck shall not be operated on the Interstate and Defense Highways, on expressways, or on freeways;
- A minitruck must always use headlights and taillights;

- Minitrucks require only one license plate, to be prominently displayed on the back – see [60-3,100]
- A minitruck is a “motor vehicle”.

LOW SPEED VEHICLE RESTRICTIONS: [60-6380]

The following rules apply for any low speed vehicle:

- It may be operated on any highway with a speed limit of not more than thirty-five miles per hour.
- It may cross a highway on which the speed limit is more than thirty-five miles per hour.
- The operator of a low-speed vehicle as authorized under this section must have a valid Class O operator's license.
- It must have liability insurance coverage.
- It must be registered under [60-383.02] and the license plate will be half the size of a car or truck – see [60-3100].
- The Department of Roads may prohibit the operation of low-speed vehicles for public safety concerns.
- A county, city, or village may enact more stringent ordinances governing low-speed vehicle operation.

GOLF CAR VEHICLES: [60-6381]

A city or village or county may authorize the operation of golf car vehicles on streets adjacent and contiguous to a golf course.

- Any person operating a Golf Car Vehicle must have a valid Class O operator's license,
- The owner of the Golf Car Vehicle must have liability insurance,
- The DMV may prohibit the operation of Golf Car Vehicle on any highway under its jurisdiction for public safety,
- Golf Car Vehicles do not need to be registered and are not within the definition of “motor vehicle”.

GENERAL TRAFFIC RULES:

OBEDIENCE TO LAW ENFORCEMENT OFFICER: [60-6110]

1. Elements:

It is unlawful for any person to:

- a. Knowingly fail or refuse to obey any lawful order
- b. Of a law enforcement officer controlling or directing traffic

2. Classification:

- a. Traffic Infraction.
- b. Class III Misdemeanor if the officer was attempting to apprehend a traffic violator.

ABANDONED VEHICLES

1. Elements: [60-1907]

No person shall cause any vehicle to be an abandoned vehicle under the following circumstances:

- a. A vehicle is left unattended, with no license plates or valid In Transit stickers, for more than six hours on any public property;
- b. A vehicle is left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;
- c. A vehicle is left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;
- d. A vehicle is left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

2. Definitions: [60-1901]

- ***Public property*** means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property;
- ***Private property*** means any privately owned property that

is not included within the definition of public property.

3. Classification:
Class II Misdemeanor

*NOTE: A motor vehicle subject to forfeiture under section [28-431] is not an abandoned vehicle under this section.

TEXTING AND HANDHELD WIRELESS COMMUNICATION DEVICES (non-commercial vehicles):

1. Elements: [60-6,179.01]

It is unlawful for the operator of a vehicle that is motion to use a handheld wireless communication device to:

- a. Read a written communication,
- b. Manually type a written communication, or
- c. Send a written communication.

2. Exceptions:

This prohibition does not apply to:

- a. A law enforcement officer, firefighter, ambulance driver, or emergency medical technician performing official duties;
- b. Any motor vehicle operator in an emergency situation.

3. Definitions:

- ***Handheld wireless communication device*** means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication (such as a cellphone, text-messaging device, personal digital assistant, a pager, or a laptop computer).
- Handheld wireless communication device does not include an electronic device that is part of, or permanently attached to the motor vehicle or is a hands-free wireless device;
- ***Written communication*** includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

4. Enforcement:

Enforcement is a secondary action only, when a driver of a motor vehicle has been cited or charged with another offense.

5. Classification:

Traffic Infraction

- Two hundred dollars for the first offense;
- Three hundred dollars for a second offense; and
- Five hundred dollars for a third and subsequent offense.

*NOTE the difference between the rules for *handheld communication devices* (written communications such as texting) that apply to all drivers versus the rules for *interactive communication devices* (voice and data) rules that apply only to some classification of licenses. Note also the specific rules for texting applicable only to commercial drivers.

TEXTING WHILE OPERATING A COMMERCIAL VEHICLE:

1. Elements: [60-6197.02] ***2012 Update***

Beginning October 27, 2013, it is unlawful for the operator of a commercial vehicle to:

- a. Engage in texting while driving,
- b. Unless one of the exceptions applies.

2. Definition:

- **Driving** means operating a commercial motor vehicle, with the motor running (including while temporarily stationary because of traffic, or a traffic control device, or other momentary delays);
- **Electronic device** includes a cellular telephone, personal digital assistant, pager, computer; or *any other device* used to input, write, send, receive, or read text;
- **Texting** means manually entering or reading alphanumeric text to or from an electronic device. Texting includes, but is not limited to, short message service, emailing, instant

messaging, a command or request to access an Internet web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or electronic text entry for present or future communication.

3. Exceptions:

- (1) Texting while driving is permissible by an operator of a commercial motor vehicle if such texting is necessary to communicate with law enforcement officials or other emergency services;
- (2) Texting does not include:
 - (a) Inputting, selecting, or reading information on a global positioning system or navigation system;
 - (b) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or
 - (c) Using a device capable of performing multiple functions, including, but not limited to, fleet management systems, dispatching devices, smartphones, citizens band radios, and music players, for a purpose other than texting.
- (3) Driving does not include operating a commercial motor moved to the side or off a highway, halted in a location where the vehicle can safely remain stationary (with or without the motor running).

4. Classification:

Violation is a traffic infraction. The violator is subject to disqualification as provided in section [60-4,168], shall be assessed points on his or her motor vehicle operator's license pursuant to section [60-4,182], and shall be fined:

- Two hundred dollars for the first offense;
- Three hundred dollars for a second offense; and
- Five hundred dollars for a third and subsequent offense.

INTERACTIVE WIRELESS COMMUNICATION DEVICES:

1. Elements: [60-4124]

The holder of a Provisional Operator's Permit, an LPD-learners permit, a School Permit, or an LPE-learners permit:

- a. Shall not use any interactive wireless communication device
- b. While operating a motor vehicle on the highways of this state.

2. Definition: [60-470.02]

An ***Interactive Wireless Communication Device*** is any wireless electronic communication device that provides for voice or data communication between two or more parties.

- Prohibited devices include, but are not limited to, a mobile or cellphone, text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or laptop computer.

3. Enforcement

Enforcement is a secondary action only and the driver must also be cited or charged with a violation of some other law.

4. Classification

Infraction

ANIMALS AND FARM VEHICLES ON ROADWAY: [60-6111]

Persons riding animals or driving animal drawn vehicles or an implement of husbandry upon a roadway are subject to all the duties made applicable to a driver of a vehicle

- Slow moving animals or vehicles that obstruct traffic must drive to the nearest available shoulder and allow traffic to pass.

OVERTAKING BICYCLES, PEDESTRIANS, *2012 Update*
MOBILITY DEVICES: [60-6,133]

The driver of a vehicle must exercise due care, including:

- a. Leaving a safe distance of no less than three feet when overtaking a bicycle, pedestrian or mobility device,
- b. And maintaining such clearance until safely past.

TRAFFIC CONTROL SIGNALS: [60-6123]

Traffic lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

- a. **Green Light:**
Vehicle traffic facing green may proceed straight through or turn right or left unless a sign at such place prohibits either such turn.
 - Vehicle traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or adjacent crosswalk;
- b. **Green Arrow:**
Vehicle traffic facing a green arrow may cautiously enter the

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intersection only to make the movement indicated by such arrow or other indications shown at the same time.

- Such traffic shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or adjacent crosswalk;

c. **Yellow:**

Vehicle traffic facing a steady yellow shall stop before entering the nearest crosswalk at the intersection.

- But if a stop cannot be made in safety, a vehicle may be driven cautiously through the intersection
- A yellow light is a warning that green is going to end and the light will turn red.

d. **Red:**

Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. Traffic will remain stopped until an indication to proceed is shown.

Vehicles Turning on Red:

- (1) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;
- (2) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to

other traffic lawfully using the intersection.

- e. **Flashing Red:**
Vehicles shall stop at a clearly marked stop line or if there is no such line, then before entering the crosswalk on the near side of the intersection. If there is no crosswalk, the stop is to be made at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
- f. **Flashing Yellow:**
Vehicles may proceed through the intersection or past such light only with caution.

PEDESTRIANS:

Unless otherwise directed by a pedestrian-control signal, the following rules apply for pedestrians facing a traffic signal:

- a. Pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.
- b. Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are not to start to cross the roadway.
- c. Pedestrians facing a steady red indication alone shall not enter the roadway.
- d. Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by the drivers of all vehicles.
- e. No pedestrian shall start to cross the roadway in the direction of a DONT WALK indication or a symbol of an upraised hand, but any pedestrian who has partially completed his or her crossing on the WALK or walking person indication shall immediately proceed to a sidewalk or safety island while the flashing DONT WALK or flashing upraised hand indication is showing.

DAMAGING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,129]

No person shall, without lawful authority:

- a. Willfully or maliciously,
- b. Injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

2. Classification:

Class II misdemeanor

REMOVING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,129]

No person shall, without lawful authority:

- a. Remove any official sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes,
- b. It shall be unlawful for any person to possess a sign or device that has been unlawfully removed.

2. Classification:

Class II misdemeanor

SHOOTING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,130]

It is unlawful for any person to willfully or maliciously shoot upon the public highway and injure, deface, damage or destroy any sign, monument, road marker, traffic control device, traffic surveillance device, or other public notice lawfully placed upon such highways.

2. Classification:

Class III misdemeanor

DRIVING ON RIGHT OF ROADWAY REQUIRED: [60-6,131]

Upon all roadways of sufficient width, a vehicle shall be drive upon the right half of the roadway except as follows:

- a. When overtaking and passing another vehicle proceeding in the

- same direction;
- b. When an obstruction exists making it necessary;
- c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon;
- d. Upon a roadway restricted to one-way traffic.

OVERTAKING AND PASSING ON THE LEFT: [60-6,133]

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

- a. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and
- b. The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

OVERTAKING AND PASSING ON THE RIGHT: [60-6,134]

In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway. The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

- When the vehicle to be overtaken is making or about to make a left turn upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or
- Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more

lanes of moving vehicles.

PASSING IN A SCHOOL CROSSING ZONE: [60-6,134.01]

It is unlawful to overtake and pass another vehicle in a school-crossing zone on a roadway with only one lane of traffic in each direction.

- The fine is up to \$200 for the first offense and \$200 to \$400 for a second or subsequent offense.

FOLLOWING TOO CLOSELY: [60-6,140]

- a. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.
- b. The driver of any motor vehicle drawing a trailer, semi-trailer, or another vehicle, when traveling outside of a business or residential district, shall leave sufficient space for an overtaking vehicle to enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semi-trailer, or another vehicle more closely than one hundred feet.
- c. The driver of any motor vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

TRAFFIC LANE RULES: [60-6,139]

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

- a. A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

- b. Upon a roadway that is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except:
 - (1) When overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance,
 - (2) In preparation for making a left turn, or
 - (3) When such center lane is allocated exclusively (by a traffic control device) to traffic moving in the same direction that the vehicle is proceeding.

VEHICLE RIGHT OF WAY RULES:

a. **Entering Intersection At Same Time:**

When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

b. **Entering From an Entrance Ramp:**

A vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield the right-of-way to a vehicle on the main roadway entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.

c. **From an Unpaved Road:**

The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.

d. **Turning Left:**

The driver of a vehicle who intends to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or approaching so

close as to constitute an immediate hazard.

- e. **From a Stop Sign:**
After having stopped as required at a stop sign, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.
- f. **From a Yield Sign:**
After slowing or stopping as required at a yield sign, a vehicle shall yield the right-of-way to any other vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.
- g. **From an Alley, Driveway, Private Road, or Building:**
The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway.
- h. **Entering an Alley, Building, Private Road, or Driveway:**
The driver of a vehicle entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk
- i. **From a Stopped or Parked Position:**
No person shall move a vehicle that is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety.
- j. **To an Emergency Vehicle:**
Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals, the driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as

possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer.

k. **To A Pedestrian:**

Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way and come to a complete stop for a pedestrian crossing the roadway within a crosswalk.

- Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.
- No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

YIELD SIGN VIOLATION: [60-6,148]

The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety, to stop. If point of the stop is according to the rules of stop signs.

STOP SIGN VIOLATION: [60-6,148]

A vehicle approaching an intersection where a stop is indicated by a stop sign shall stop:

- a. At a clearly marked stop line;
- b. If there is no such line the vehicle shall stop before entering the crosswalk on the near side of the intersection;
- c. If there is no such crosswalk, the vehicle shall stop at the point nearest the intersecting roadway where the driver has a view of

approaching traffic on the intersecting roadway before entering the intersection.

REQUIRED POSITION AND METHOD OF TURNING: [60-6,159]

a. **Right Turns:**

Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

b. **Left Turns:**

The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane, and a left turn shall be made so as to leave the intersection, as nearly as practicable, in the extreme left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

U-TURNS: [60-6,160]

No vehicle shall be turned so as to proceed in the opposite direction:

- a. Upon any curve,
- b. Upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet,
- c. Or at any place where prohibited by a sign,
- d. No vehicle, except authorized emergency vehicles, shall be turned at any place on a freeway so as to proceed in the opposite direction.

CHANGING LANES WITHOUT SAFETY: [60-6,161]

No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety

TURN SIGNALS REQUIRED: [60-6,161]

No person shall turn a vehicle or move right or left upon a roadway without giving an appropriate signal.

- a. A turn signal shall be given either by means of the hand and arm or by signal lights. If a hand and arm signal would not be visible both to the front and rear of the vehicle for one hundred feet, the required signals shall be given by such a light or device.
- b. A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

SUDDEN STOPPING WITHOUT SIGNAL: [60-6,161]

No person shall stop or suddenly decrease the speed of A vehicle without first giving an appropriate signal in the manner provided in such sections to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

- A stop signal or turn signal is required by means of the hand and arm or by signal lights. If a hand and arm signal would not be visible both to the front and rear of the vehicle for one hundred feet, the required signals shall be given by such a light or device.

OVERLOADING THE FRONT SEAT: [60-6,179]

- a. No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.
- b. No passenger shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

RAILROAD CROSSINGS: [60-6,170]

- a. Upon approach of a railroad grade crossing a vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail

of such railroad and shall not proceed until he or she can do so safely if:

- (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
 - (2) A crossing gate is lowered or a flagperson gives or continues to give a signal of the approach or passage of a railroad train;
 - (3) A railroad train approaching within approximately one-quarter mile of the highway crossing emits a signal audible from such distance and is an immediate hazard by reason of its speed or nearness to such crossing; or
 - (4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
- b. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

SCHOOL BUS SIGNAL VIOLATION: [60-6,175]

1. Elements:

Upon meeting or overtaking any school bus from either the front or the rear, the driver of a motor vehicle shall:

- a. Reduce speed to not more than twenty-five miles per hour if the bus displays flashing yellow warning signal lights,
- b. Bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and
- c. Remain stopped until the flashing lights are off, the stop signal arm is retracted, and the school bus resumes motion.

2. Exceptions:

This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign directing traffic to proceed.

3. Classification:

- Class IV Misdemeanor,
- A five hundred dollar fine,
- Three points assessed to the driver's record.

CARELESS DRIVING:

1. Elements: [60-6212]

It is unlawful for any person to:

- a. Drive a motor vehicle carelessly or without due caution,
- b. So as to endanger a person or property.

3. Enforcement: [60-6108]

Most traffic violations apply only to publicly maintained roads and highways, but careless driving may be enforced anywhere except private property which is not open to public access.

4. Classification: [60-682]

Careless driving is a Traffic Infraction:

- Not more than one hundred dollars for the first offense;
- Not more than two hundred dollars for a second offense within a one-year period; and
- Not more than three hundred dollars for a third and subsequent offense within a one-year period

RECKLESS DRIVING:

1. Elements: [60-6,213]

Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving.

2. Enforcement: [60-6108]

Most traffic violations apply only to publicly maintained roads and highways, but reckless driving may be enforced anywhere except private property which is not open to public access.

3. Classification:

- a. Every person convicted of reckless driving shall, upon a

first conviction, be guilty of a Class III Misdemeanor;

- b. A second offense is a Class II Misdemeanor, and the court shall order the offender not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years. If the offender owned the vehicle, it will be impounded for at least two months, up to one year.
- c. A third or subsequent conviction is a Class I Misdemeanor and the court shall order the offender's license to be revoked and not to drive for any purpose for one year.

WILLFUL RECKLESS DRIVING:

1. Elements: [60-6,214]

Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving.

2. Enforcement: [60-6108]

Most traffic violations apply only to publicly maintained roads and highways, but willful reckless may be enforced anywhere except private property which is not open to public access.

3. Classification:

- a. Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III Misdemeanor;
- b. A second offense is a Class II Misdemeanor, and the court shall order the offender not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years. If the offender owned the vehicle, it will be impounded for at least two months, up to one year.
- c. A third or subsequent conviction is a Class I Misdemeanor and the court shall order the offender's license to be revoked and not to drive any motor vehicle for any purpose for a period of one year.

PROOF OF FINANCIAL RESPONSIBILITY:

1. Elements: [60-3167]

The owner of a motor vehicle or trailer must have a current and effective automobile liability policy, evidence of insurance, or proof of financial if it is operated or towed on a public roads or highway.

2. Definitions

- **Automobile liability policy** [60-310] means liability insurance written by an authorized insurance carrier protecting other persons from damages for liability on account of accidents occurring while the policy is effective;
- **Evidence of Insurance** [60-323] means proof of a current and effective automobile liability policy;
- **Owner** [60-342] means a person, firm, or corp. that either:
 - a. Holds *legal title* of a motor vehicle or trailer, OR
 - b. Has an *immediate right of possession* of the vehicle or trailer with a right of purchase agreement, a lease, or a mortgage on the vehicle or trailer.
- **Proof of financial responsibility** [60-346] means proof of ability to pay damages for liability for accidents arising out of the ownership, maintenance, or use of a motor vehicle;

3. Minimum Amount of Liability:

A liability policy or proof of financial responsibility must cover the minimum liability amounts set out by law:

- Twenty-five thousand dollars for bodily injury to or death of one person in any one accident,
- Fifty thousand dollars for bodily injury to or death of two or more persons in any one accident, and
- Twenty-five thousand dollars for property damage of other persons in any one accident.

4. Presumption:

The owner shall be presumed to know of the operation or towing of his or her motor vehicle or trailer and can be prosecuted if someone else was operating or towing it while uninsured.

5. Forgiveness: [60-3167(2)]

An owner who brings such proof *to the prosecutor within 10 days* of the request by an officer will not be prosecuted.

6. Classification:

- a. Class II Misdemeanor
- b. Owner will be suspended by DMV unless proof of insurance at the time of the citation is shown.

DRIVER DUTY UPON APPROACH OF FIRE AND POLICE

DEPARTMENT VEHICLES: [60-6154]

Upon approach of an authorized emergency vehicle, giving audible signal by bell, siren, or exhaust whistle:

- a. All other vehicles shall proceed to right-hand curb and stop until police vehicle has passed,
- b. It is unlawful to follow any fire apparatus closer than 500 feet (vehicles on official business excepted),
- c. It is unlawful to drive into or park within the block where fire apparatus has stopped to answer fire alarm.

***TRAFFIC MUST “MOVE OVER” FOR STOPPED
EMERGENCY OR ROAD ASSISTANCE VEHICLES:*** [60-6,378]

1. Elements:

If an authorized emergency vehicle or road assistance vehicle is stopped on a *controlled-access highway* with at least two adjacent lanes of travel in the same direction on the same side of the highway, and the emergency or road assistance vehicle is using proper audible or visual signals, the following rules apply:

- a. Drivers (using due regard, care, and caution for all persons) must yield the right of way and “move over” into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle,
- b. Unless directed otherwise by a peace officer or other authorized emergency personnel.

2. Exceptions:

- (1) The immediate presence of vehicular or pedestrian traffic,
 - (2) Or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway,
 - b. Then the driver of the approaching or passing vehicle shall:
 - (1) Reduce his or her speed,
 - (2) Maintain a safe speed with regard to the location of the stopped vehicles, the weather and road conditions, and vehicular or pedestrian traffic,
 - (3) And proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.
3. **Definitions:**
- ***Controlled-Access Highway*** means every highway or roadway for which there is no legal right of access to or egress from except at such points and in such manner as determined by the public authority having jurisdiction over such highway;
 - ***Authorized Emergency Vehicle*** means all publicly owned police, fire, or rescue vehicles, as well as ambulances and some privately owned vehicles designated by DMV, and military vehicles designated by the National Guard;

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- **Road Assistance Vehicle** includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, and a United States Department of Transportation registered towing or roadside assistance vehicle. Such vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

4. Classification:

- A Traffic Infraction for a first offense
- Class IIIA Misdemeanor for a second or subsequent offense

*NOTE: Enforcement of this section shall not be accomplished using *simulated situations* involving an authorized emergency vehicle or a road assistance vehicle.

COASTING: [60-6182]

It is unlawful to coast in neutral gear when traveling on a downgrade.

DISABLED VEHICLES: [60-6164]

When a vehicle is disabled or inoperable in a roadway for any reason *other than an accident* and is obstructing the regular flow of traffic, the following rules apply:

- a. The driver shall move or cause the vehicle to be moved as soon as practical
- b. A disabled vehicle may remain temporarily if impossible to be moved, but the driver must get it moved as soon as practical.
- c. An officer may remove or cause a disabled vehicle that was in an accident to be removed from a roadway without the consent of the driver or owner under the guidelines of [60-696(3)] (see accidents this handbook).

RULES FOR TOWING OTHER VEHICLES: [60-3221]

Particular types of vehicles may only be pulled by certain other

types of vehicles, as listed in the statute:

1. A CABIN TRAILER shall only be towed by a properly registered Passenger car, Commercial motor vehicle or apportionable vehicle, Farm truck, Local truck, Minitruck, Recreational vehicle, or Bus;
2. A UTILITY TRAILER shall only be towed by a properly registered passenger car, Commercial Motor Vehicle or Apportionable Vehicle, farm truck, local truck, Minitruck, Recreational Vehicle, Motor vehicle which is engaged in soil and water conservation pursuant to section [60-3,149], Well-boring Apparatus, Dealer-plated vehicle, or bus.
3. A FARM TRAILER shall only be towed by a properly registered Passenger car, Commercial motor vehicle, Farm truck; or Minitruck.
4. A COMMERCIAL TRAILER shall only be towed by a properly registered motor vehicle that is engaged in soil and water conservation, a Local truck, Well-boring apparatus, Commercial motor vehicle or apportionable vehicle, Dealer-plated vehicle, Bus, or Farm truck.
5. A FERTILIZER TRAILER shall only be towed by a properly registered Passenger car, Commercial motor vehicle or apportionable vehicle, Farm truck, or a Local truck.
6. A POLE AND CABLE REEL TRAILER shall only be towed by a properly registered Commercial motor vehicle or apportionable vehicle, or a Local truck.
7. A DEALER-PLATED TRAILER shall only be towed by a dealer-plated vehicle, a Passenger car, a Commercial motor vehicle or apportionable vehicle, a Farm truck, or a Minitruck;
8. Trailers registered pursuant to section [60-3,198] as part of an APPORTIONED FLEET shall only be towed by a properly registered Motor vehicle engaged in soil and water conservation under [60-3,149], a Local truck, Well-boring apparatus, Commercial motor vehicle or apportionable vehicle, Dealer-plated vehicle, Bus, or Farm truck.

HANDICAPPED PARKING VIOLATIONS:

1. Elements: [18-1741]

It is unlawful for any person to do any of the following:

- a. Park a vehicle in a designated space or access aisle without displaying a valid permit;
- b. Display a permit without authorization and park in a handicapped or disabled parking space or access aisle;
- c. Transport a handicapped person and park in a designated space or access aisle unless the permit holder is actually in the vehicle or unless such person has left the parked vehicle and will return before the vehicle leaves.

2. Other Violations:

- Permits are not transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose issued;
- No person shall alter or reproduce a permit in any manner;
- No person shall knowingly hold more than one permit;
- No person shall knowingly provide false information on an application for a permit.

3. Classification:

Any violation is a Handicapped Parking Infraction, with a fine:

- Not more than one hundred fifty dollars for the first offense,
- Not more than three hundred dollars for a second offense within a one-year period, and
- Not more than five hundred dollars for a third or subsequent offense within a one-year period.
- A violation may also be cause for suspension of such permit for a period of six months and such other punishment as may be provided by local ordinance.

4. Other Considerations:

- A cited person may have the complaint dismissed by filing an affidavit with the court within seven business days, signed by a peace officer certifying that the recipient is the lawful possessor in his or her own right of a handicapped parking permit issued under section [18-1738] or [18-1738.01] and that the peace officer has personally viewed the permit;

- If the identity of the person who parked the vehicle in violation cannot be readily determined, the owner or person in whose name the vehicle is registered is responsible;
- Designation of a handicapped space or access aisle shall be made by posting a sign aboveground and immediately adjacent to and visible from each stall or space, including access aisles. Such sign must comply with federal law;
- Any person failing to appear or otherwise comply with the command of a handicapped parking citation for a handicapped parking infraction shall be guilty of a Class III misdemeanor;
- **Access Aisle** means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with federal law.

WINDSHIELD OBSTRUCTIONS:

1. Elements: [60-6,256]

It is unlawful to operate a motor vehicle with any object placed or hung in or upon the motor vehicle in such a manner as to:

- a. Significantly and materially obstruct or interfere with the view of the operator through the windshield, OR
- b. To prevent the operator from having a clear and full view of the road and condition of traffic behind the vehicle,
- c. Except required or permitted equipment of the vehicle,

2. Exceptions:

A sticker or identification authorized or required by a government agency may be placed upon the windshield of a motor vehicle without violating this section.

3. Enforcement:

Enforcement of this section is a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

4. Classification:

Traffic Infraction with a fine of \$50 (1st offense), \$100 (2nd offense), and \$150 (3rd or subsequent offense).

REGISTRATION AND LICENSE PLATES:

VEHICLES AND TRAILERS MUST BE REGISTERED: [60-362]

Unless otherwise expressly provided, no motor vehicle shall be operated or parked and no trailer shall be towed or parked on the highways of this state unless the motor vehicle or trailer is registered in accordance with the Motor Vehicle Registration Act.

- There is a rebuttable presumption that any motor vehicle or trailer stored and kept on private property for more than thirty days in the state is being operated, parked, or towed on the highways of Nebraska, and is therefore required to be registered in accordance with the Motor Vehicle Registration Act [60-301] to [60-3,222].

DUTY TO CARRY REGISTRATION CERTIFICATE: [60-363]

No person shall operate or park a motor vehicle or tow or park a trailer on the highways unless such motor vehicle or trailer at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it.

- In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.
- The only specific exception to this rule is for fertilizer trailers as defined in section [60-326]. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer.

INTRANSIT VEHICLES: [60-365]

An intransit sticker allows the owner of a newly purchased motor vehicle trailer to lawfully operate or tow such vehicle without a license plate for a period of thirty days from the date of purchase.

- A motor vehicle requires two intransit stickers, displayed on both the front and either the rear or rear side windows;
- A motorcycle is required to display only one intransit sticker, half the size required for a motor vehicle;

- A trailer intransit must be displayed on both the front and rear,
- All intransit stickers shall be plainly printed in black letters the words In Transit, and shall include a registration number for which a record is kept by the issuing dealer;
- A dealer-issued intransit sticker is presumptively valid, and the vehicle may not be stopped to check the validity of such sticker,
- A vehicle displaying an intransit that was not issued by a dealer is subject to being stopped, and an officer may require the person in charge of the motor vehicle or trailer to present a title, a bill of sale or other satisfactory evidence of ownership and the date of transfer.

VEHICLES FROM OTHER STATES: [60-366]

Vehicles from other states may be operated or towed in Nebraska if such vehicle is properly registered where the owner resides, if the license plate or plates are displayed.

- Vehicles from other states must be registered in Nebraska if the nonresident owner is gainfully employed or present in this state, after 30 days of continuous employment or presence unless the state of his or her legal residence grants immunity to residents of Nebraska who operate or tow a vehicle in that state.
- A nonresident owner may register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

REGISTRATION IN THE PROPER COUNTY: [60-385]

Vehicles must be registered in the county where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year (where the vehicle has “situs”) under [60-349].

- A Student may register in the county of their residence if different from the place at which he or she is attending school.

***FICTITIOUS, ALTERED, OR CANCELLED LICENSE PLATES
FOR A VEHICLE OR TRAILER: [60-399]***

No person shall attach to or display on a motor vehicle or trailer any:

- a. License plate or registration certificate other than as assigned to it for the current registration period,
- b. Fictitious or altered license plates or registration certificate,
- c. License plates or registration certificate that has been canceled by DMV, or
- d. License plates lacking current validation decals.

PROPER DISPLAY OF LICENSE PLATES: [60-399], [60-3100]

No person shall operate, park, tow, or cause to be operated, parked or towed, a motor vehicle or trailer unless:

- Such motor vehicle or trailer has displayed the proper number of plates as required by law;
- The license plates have current validation decals affixed to them;
- The License plates are securely fastened in an upright position to the vehicle or trailer so as to prevent such plates from swinging;
- The bottom of the license plate must be a minimum distance of twelve inches from the ground;
- All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.
- When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear. When only one plate is issued for an apportionable vehicle registered pursuant to [60-3,198] and truck-tractors, it shall be prominently displayed on the front.

UNDERCOVER LICENSE PLATES: [60-3,135]

Undercover license plates issued to law enforcement agencies and shall be used only for legitimate criminal investigatory purposes.

- Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles;
- An agency contact person shall be held accountable to keep records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure;
- Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

SEATBELT AND CHILD RESTRAINT REQUIREMENTS:

SEATBELTS:

Motor vehicles built since 1973 (except farm equipment, motorcycles, and buses) must be equipped with an occupant protection system that meets federal regulations.

1. Elements: [60-6,270]

It is unlawful for any person to operate a motor vehicle upon a highway or street in this state unless:

- a. The driver and each front-seat occupant are wearing occupant protection systems;
- b. All children between six years of age and eighteen years of age must use an occupant protection system;
- c. All persons being transported by a holder of a provisional operator's permit (POP) or a school permit shall use an occupant protection system;
- d. All occupant protection systems worn must be properly adjusted and fastened.

2. Exceptions:

The following persons shall not be required to wear an

occupant protection system:

- (1) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system for medical reasons;
- (2) A USPS rural letter carrier while performing duties between the first and last delivery points; and
- (3) A member of an emergency medical service while involved in patient care.

3. Classification:

Violation is a Traffic Infraction with a fine of \$25.

- No points or court costs are assessed;
- Only one violation may be assessed against a driver, regardless of how many person in the vehicle are not wearing a seat belt.

*NOTE: Enforcement of a seatbelt violation may only be done as a secondary action when a driver has been cited or charged with a violation of some other offense. Child restraint violations for children under six are primary, however.

CHILD RESTRAINT REQUIREMENTS:

1. Elements: [60-6,267]

It is unlawful for the driver of any motor vehicle which has or is required to have an occupant protection system:

- a. To transport any child less than six years of age,
- b. Without the use of a correctly installed child passenger restraint system,
- c. Of a type which meets the standards of the National Highway Traffic Safety Administration.

2. Exceptions:

Vehicles which do not need to use child restraint systems under this section are:

- Authorized emergency vehicles;
- Taxicabs, buses, mopeds, motorcycles;

- A motor vehicle operated in a parade or exhibition conducted in accordance with state and local laws;
 - Any motor vehicle model year 1963 or earlier which is not equipped with an occupant protection system;
 - A vehicle transporting a child unable to wear an occupant protection system for medical reasons if the driver has a signed written statement in the vehicle from a physician identifying the child and the grounds for such waiver.
3. **Classification:**
- Violation is an Infraction with a fine of twenty-five dollars for each violation.
 - Failure to provide a child restraint system for more than one child in the same vehicle is not a separate offense.

*NOTE: A child safety seat violation involving a child up to age six is enforced as a primary offense

ACCIDENTS AND ACCIDENT REPORTS:

LEAVE THE SCENE OF A PROPERTY DAMAGE ACCIDENT:

1. **Elements:** [60-696]
- The driver of any vehicle involved in an accident/collision:
- a. Upon a public highway, private road, or private drive,
 - b. Resulting in damage to property,
 - c. Shall immediately stop the vehicle at the scene of the accident,
 - d. And provide the following information to the driver or occupants of any other vehicle involved or the owner of the property struck:
 - (1) His/her name, address, telephone number , And
 - (2) His/her operator's license number
2. **Classification:**
- Class II Misdemeanor (if no convictions under [60-696] in twelve years prior)

- Class I Misdemeanor (if one or more convictions under 60-696 in the twelve years prior)
- The court may also revoke such person's driving privilege for one year upon conviction for leaving the scene.

LEAVE THE SCENE OF AN INJURY OR DEATH ACCIDENT:

1. Elements: [60-697]

- a. The driver of any vehicle involved in an accident
- b. Upon a public highway, private road, or private drive
- c. Resulting in injury or death to any person, shall:
 - (1) Immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, AND
 - (2) Give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the driver or occupants of any vehicle collided with, AND
 - (3) Render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

2. Classification: [60-698]:

- Class IIIA Felony for an injury accident that did not involve a serious bodily injury or death;
- Class III Felony for an injury accident that resulted in a serious bodily injury or death;
- The court shall also order the offender's driving privilege revoked for a period of between one and fifteen years.

UNATTENDED VEHICLE OR PROPERTY: [60-696]

1. Elements:

The driver of any vehicle involved in an accident

- a. Upon a public highway, private road, or private drive,

- b. Resulting in damage to an unattended vehicle or property,
 - c. Shall immediately stop such vehicle,
 - d. And leave written notice in a conspicuous place in or on the unattended vehicle or property containing:
 - (1) His/her name, address, telephone number,
 - (2) And give his or her operator's license number
2. **Classification:**
- Class II Misdemeanor (if no convictions under 60-696 in twelve years prior)
 - Class I Misdemeanor (if one or more convictions under 60-696 in the twelve years prior)
 - The court may also revoke such persons drivers privilege for one year upon conviction for leaving the scene.

ADDITIONAL DUTY TO REPORT COLLISION:

1. **Elements:** [60-696]
- a. The driver of any vehicle involved in an accident
 - b. Upon a public highway, private road, or private drive
 - c. Resulting in damage to an unattended vehicle or property
 - d. Shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.
2. **Classification:**
- Class II Misdemeanor (if no prior convictions in twelve years prior)
 - Class I Misdemeanor (if one or more convictions under 60-696 in the twelve years prior)
 - The court may also revoke such person's driving privilege for one year upon conviction.

AUTHORITY OF PEACE OFFICER TO REMOVE

ROAD OBSTRUCTIONS: [60-696(3)]

2. **Generally:**
- A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner:

- a. Any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety.
- b. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

3. Exception:

This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section [75-362].

ACCIDENT REPORTS:

(1) Officers Duty

It is the duty of any peace officer:

- a. Who investigates any traffic accident in the performance of his or her official duties,
- b. Resulting in injury or death to any person,
- c. Or in which estimated damage exceeds one thousand dollars, to the property of any one person,
- d. To submit an original report of such investigation to the Accident Records Bureau of the Department of Roads within ten days after each such accident.

(2) Driver Duty:

1. Elements: [60-699]

- a. The operator of any vehicle involved in an accident,
- b. Resulting in injuries or death to any person,
- c. OR damage to the property of any one person, including such operator, to an apparent extent of more than one thousand dollars,
- d. Shall within ten days forward a report (*with correct information*) of such accident to the Dept. of Roads.
- e. If the operator is physically incapable of making the

report, the owner of the motor vehicle involved in the accident shall report the matter in writing to the Department of Roads within ten days from the time he/she learns of the accident,

2. Classification:

Class V Misdemeanor for failure to report or for giving incorrect information

(3) Effect of Filed Accident Reports:

- Such reports are *not* admissible in evidence at trial and are not evidence of negligence.
- All reports made by peace officers are public records.
- Reports filed by the operator or owner are not public record.

**DRIVING UNDER THE INFLUENCE OF
ALCOHOL OR DRUGS**

GENERALLY:

DUI (DWI) is a single offense that can be proven one of two ways:

- The first way is to show that the driver was impaired and is under the influence, regardless of what breath/blood alcohol concentration (BAC) that person had.
- The second way is to simply show the BAC at or above the legal limit, regardless of impairment. Failure of a chemical test is a “per se” evidence of violating this section.

VENUE: [60-6108]

DUI law applies anywhere throughout the state, except private property which is not open to public access.

- This is an exception to the general rule that traffic laws apply only to the public streets

DEFINITIONS:

Most definitions related to DUI are not found in the Nebraska

Statutes, but rather are defined by the courts, or in some cases by the Nebraska Administrative Code, Title 177.

- ***Actual Physical Control*** means dominion and physical possession of a motor vehicle, but not to the point of operation.
- **Motor vehicle** [60-638]: For purposes of the rules of the road, the term *Motor Vehicle* means every self-propelled land vehicle, not operated upon rails, except mopeds, self-propelled chairs used by disabled persons, and electric personal assistive mobility devices.
- ***Open to Public Access*** means anyplace designed for motor vehicle traffic with unrestricted ingress/egress to/from the public streets (parking lots, trailer courts, apartment complexes, etc.).
- ***Operate*** means physically handle the controls of a motor vehicle
- ***Under the Influence*** means the ingestion of alcohol or drugs (or both) in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner.
 - a. It must be shown that the use of alcohol or any drug caused the impairment,
 - b. It must be shown that the operator was under the influence *at the time* of driving,
 - c. Proof that a driver was *under the influence* does not depend on a pretest or chemical test (although such evidence may help show the reason for observed impairment),
 - d. A driver who tests *under* the per se legal limit may still be under the influence of alcohol and/or drugs,
 - e. Sufficient evidence for a conviction may come from either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests,
 - f. If the impairment observed cannot be related to alcohol, officers should consider a second test for drugs.

PRIOR CONVICTIONS: [60-6197.02]: To enhance a charge of DUI or Refusal beyond a first offense requires one or more valid prior convictions.

- A prior conviction must have occurred within the previous fifteen years, computed from the date of the prior offense.
- A prior conviction may be a state violation or a city or village ordinance enacted in conformance with the noted statute.
- Any of the following offenses qualify as a prior conviction:

Convictions used to enhance a DUI or Refusal:	
DUI	[60-6,196]
DUI Serious Bodily Injury	[60-6198],
Refusal of a Chemical Test	[60-6197]
Felony Motor Vehicle Homicide while DUI or Felony DUR related to a DUI	[28-306(3)(b)] [28-306(3)(c)]
Motor Vehicle Homicide of an Unborn Child while DUI or Felony DUR related to a DUI	[28-394(3)(b)] [28-394(3)(c)]
DUI or Refusal that was committed with child passenger under age 16	[28-1254]
Out of State Convictions that may be used to enhance:	
Any conviction for any of the above under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of Nebraska law.	

DRIVING UNDER THE INFLUENCE (DUI):

1. Elements: [60-6196]

It shall be unlawful for any person to operate or be in actual physical control of a motor vehicle:

- a. While under the influence,

- b. of alcoholic liquor or any drug,
- c. Or with a concentration of alcohol in his or her blood or breath at or above the legal limit (.08).

2. Classification: [60-6197.03], [28-106]

The penalty for DUI depends on whether the person convicted has a prior offense, whether there was a chemical test, and what the result (BAC) of the chemical test was. There are enhanced penalties for drivers who have a BAC of .15 or greater (often referred to as an “Aggravated” DUI).

<i>First Offense:</i>	<ul style="list-style-type: none"> • <u>Class W Misdemeanor</u> • 7-60 days jail, \$500 fine, • 6 month operator license revocation, • 1 year license revocation if BAC is .15 or greater.
<i>Second Offense:</i>	<ul style="list-style-type: none"> a. <u>Class W Misdemeanor</u> (BAC .08 to .149): <ul style="list-style-type: none"> • 30 days to six months jail, \$500 fine • One year operator license revocation b. <u>Class I Misdemeanor</u> (BAC of .15 or greater) <ul style="list-style-type: none"> • One to fifteen year operator license revocation
<i>Third Offense:</i>	<ul style="list-style-type: none"> a. <u>Class W Misdemeanor</u> (BAC .08 to .149): <ul style="list-style-type: none"> • 90 days to one year jail, \$1000 fine • Fifteen year operator license revocation b. <u>Class IIIA Felony</u> (BAC of .15 or greater) <ul style="list-style-type: none"> • Fifteen year operator license revocation
<i>Fourth Offense:</i>	<ul style="list-style-type: none"> a. <u>Class IIIA Felony</u> (BAC .08 to .149): <ul style="list-style-type: none"> • Fifteen year operator license revocation b. <u>Class III Felony</u> (BAC of .15 or greater) <ul style="list-style-type: none"> • Fifteen year operator license revocation

<i>Fifth and Subsequent Offense:</i>	a. <u>Class III Felony</u> <ul style="list-style-type: none"> • minimum two years imprisonment) • Fifteen year operator license revocation b. <u>Class II Felony</u> (BAC of .15 or greater) <ul style="list-style-type: none"> • Fifteen year operator license revocation
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ZERO-TOLERANCE (.02) VIOLATION

FOR FELONY DUI OFFENDERS:

1. Elements: [60-6196.01]

It is unlawful for anyone who has a prior conviction for felony DUI within the previous fifteen years to:

- a. Operate or been in the actual physical control of any motor vehicle,
- b. When such person has a blood or breath alcohol concentration of two-hundredths (.02) or more.

(3) Classification:

Class IIIA Misdemeanor.

IMPLIED CONSENT: [60-6,197]

The implied consent provisions of Nebraska law are the basis for an officer to demand a test for a suspected drunk driver. Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs.

- Any peace officer that is authorized to make arrests for traffic violations may demand a chemical test if the conditions of the implied consent law (listed below) are met.
- Any person who refuses a chemical test shall be guilty of a crime and upon conviction punished as provided in sections [60-6,197.02] to [60-6,197.08].
- Note that a repeat drunk driver who refuses the chemical test

- will be punished the same as an Aggravated DUI offender.

1. Chemical Test Advisement Required

Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to the implied consent law shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged.

- Failure to provide the advisement will not affect the admissibility of the chemical test (as in a prosecution for DUI), but will negate the state's ability to bring any criminal charges against a refusing party for the offense of refusal under [60-6197].

2. When a Chemical Test May Be Required:

a. Arrest for DUI

A peace officer may require a chemical test from any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs. The arresting officer must have reasonable grounds to believe that such person was in violation of section [60-6,196].

b. Motor Vehicle Accident While DUI

Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test if the officer has reasonable grounds to believe that such person was in violation of section [60-6,196] at the time of the accident.

c. Fail or Refuse PBT

Any person who refuses to submit to a preliminary breath test or whose preliminary breath test results indicate a BAC of .08 or above shall be placed under arrest.

3. ***Right to a Lawyer / Miranda Warnings:***

A motor vehicle driver is not entitled to consult a lawyer before taking a chemical test of the blood, breath, or urine, nor shall the test be delayed by such a request.

- Miranda warnings do not need to be given prior to a driver being required to submit to a chemical test under the implied consent law.

Continued on the next page

4. *Choice of Test*

Any person subject to the implied consent provisions may be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs.

- The *officer* decides whether the test or tests are of blood, breath, or urine [60-6,199].

5. *Unconscious Person May Be Tested* [60-6200]

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the implied consent.

6. *Leaving the State Does not Revoke Consent*

A person involved in a motor vehicle accident remains subject to the implied consent law even if they leave the state.

- This is particularly helpful when a driver is transported to a hospital across state lines.

7. *Right to Independent Test* [60-6199]

The person tested shall be permitted to have a physician evaluate them and perform independent tests, in addition to and following the test or tests administered at the direction of the officer.

8. *Recording Chemical Test Results:*

- Breath Test Results shall be reported as hundredths or thousandths of a gram of alcohol per 210 liters of breath on the checklist from NAC Title 177 (Test results shall not be rounded upward). The completed checklist is the official record of breath test results (not the printout).
- Blood Test Results shall be reported in terms of hundredths or thousandths of a gram of alcohol per 100 milliliters of blood (test results shall not be rounded upward).

REFUSAL TO SUBMIT TO A CHEMICAL TEST:

This is a separate crime from DUI and may be charged in addition to DUI if sufficient facts are shown that the driver was under the influence.

1. Elements: [60-6197]

It is unlawful for any person:

- a. To refuse to submit to a chemical test or tests of blood, breath, or urine;
- b. When ordered to submit to such test or tests by a peace officer under the implied consent provisions.
 - A single request to submit to a test is sufficient. There is no requirement that a second request be made if the person arrested refuses.

2. Definition:

Refusal of a chemical test means that a person understood what is being asked of them and then in some way manifested nonacceptance, nonconsent, or unwillingness to do so.

- A driver whose conduct would justify a reasonable person in the requesting officer's position in believing that the driver understood but was unwilling to submit to a test, has refused under the implied consent law

2. Classification:

Refusal is subject to the same penalty as DUI.

- Refusal to submit to a chemical test is admissible evidence for prosecution for driving under the influence.

*NOTE: Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to the implied consent law *shall be advised* that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to properly advise the suspect will negate the state's ability to bring a charge of refusal.

REFUSAL OF A PRELIMINARY BREATH TEST:

1. Elements: [60-6197.04]

Any peace officer authorized to make arrests for traffic laws may require a PBT from any person who operates or has in his/her actual physical control a motor vehicle in this state if the officer has reasonable grounds to believe that any of the following about the driver:

- (1) The driver has alcohol in his/her body, OR
- (2) Has committed a moving traffic violation, OR
- (3) Has been involved in a traffic accident.

2. Classification:

Refusal to submit to a PBT is a Class V Misdemeanor.

DUI OR REFUSAL; SERIOUS BODILY INJURY:

1. Elements: [60-6,198]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. In violation of [60-6196] (DUI) or [60-6197] (Refusal),
- c. And proximately cause *serious bodily injury* to another person or to the unborn child of a pregnant woman.

2. Definition:

Serious Bodily Injury means a substantial risk of death or serious permanent disfigurement, or a temporary or protracted loss or impairment of function of any part or organ of the body.

3. Classification:

Class IIIA Felony plus a revocation of 60 days to fifteen years.

ALR REVOCATIONS: [60-498.01], [60-498.02]

After a person is arrested under for failing a chemical test or for refusing to take a chemical test, the administrative license revocation procedures take effect.

- The process for ALR is that an arrested person has a fifteen-day temporary license, after which the person will be revoked for 180 days (if no history of DUI), or one year (if any prior DUI or ALR in the past fifteen years).

- An arrested person can contest the ALR by filing notice with the DMV within ten days. A hearing would be held within 20 days of the petition, and a hearing held as noted below.
- A driver that waives the ALR hearing can get an interlock permit after fifteen days if they have no prior history of DUI or ALR. A person with priors must wait an additional 45 days, and a person that refuses the chemical test must wait an additional 90 days.
- A driver that challenges the ALR is not eligible for an interlock permit unless ordered by a court at sentencing for the DUI or Refusal offense;

1. *Verbal Notice to Arrested Person:*

The arresting peace officer shall verbally serve notice to the arrested person:

- (1) Of the intention to immediately confiscate and revoke the operator's license of such person, AND
- (2) That the revocation will be automatic fifteen days after the date of arrest.

2. *Other Notice Requirements:*

The arresting peace officer submitting a sworn report shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest.

- a. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure.
- b. The peace officer shall also provide to the arrested person information from DMV describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department.
- c. If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for fifteen days,
- d. The arresting peace officer shall forward the operator's

license to the department along with the sworn report.

e. DMV may accept the sworn report electronically.

3. *Officer Must Submit Report:*

Within ten days, the arresting peace officer shall forward a sworn report. The report may be submitted electronically, and must contain the following information:

- a. That the person was arrested as described in subsection (2) of section [60-6,197] and the reasons for such arrest,
- b. That the person was requested to submit to the required test, and either:
 - (1) That the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section [60-6,196], OR
 - (2) That the person refused to submit to the required test.
- c. If the chemical test results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served, the officer shall forward the sworn report to DMV within ten days after receipt of the results. If the sworn report is not received within ten days, the revocation shall not take effect.

4. *ALR Hearings:*

At hearing the issues under dispute shall be limited to:

- a. In the case of a refusal to submit to a chemical test of blood, breath, or urine:
 - (1) Whether the officer had probable cause to believe the person was operating or in actual physical control of a motor vehicle in violation of [60-6,196], and
 - (2) Whether the person refused or failed to complete a chemical test after the request by an officer.
- b. If the chemical test discloses the presence of alcohol in a concentration specified in section [60-6,196]:
 1. Whether the officer have probable cause to believe the

person was operating or in the actual physical control of a motor vehicle in violation of [60-6,196].

2. Whether the person was operating or in the actual physical control of a motor vehicle while having a BAC in violation of [60-6,196].

DUI WITH PASSENGER UNDER 16:

1. Elements: [28-1254]

It shall be unlawful for any person to operate or be in the actual physical control of a motor vehicle:

- a. With a person under the age of sixteen years as a passenger,
- b. While under the influence of alcoholic liquor or any drug,
- c. Or with a BAC at or above the legal limit,
- d. Or if the driver refuses to submit to a chemical test or tests when directed to do so by a peace officer.

2. Classification:

Class I misdemeanor.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

MINORS AND DUI (.02 VIOLATION)

1. Elements: [60-6211.01]

It is unlawful for any person under twenty-one years of age to operate or be in actual physical control of any motor vehicle with a blood or breath alcohol concentration between .02 and .08

2. Classification:

- Traffic Infraction plus operator's license impounded by the court for thirty days.
- Refusal of a blood or breath test is a traffic infraction and the court will impound the offender's operator's license for ninety days.

DUI AND COMMERCIAL VEHICLES

The driver of a commercial vehicle is subject to the same basic rules and procedures for DUI and Refusal as the driver of a motor vehicle, with some additional requirements for officers:

- ***Commercial motor vehicle*** means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks.
- In addition to criminal prosecution for DUI the driver of a commercial vehicle is prohibited from operating the vehicle with any alcoholic liquor in his/her body.
- The driver of a commercial motor vehicle who has any alcoholic liquor in his/her body or who refuses to submit to a chemical test shall be placed out of service by the officer for twenty-four hours, and shall be subject to disqualification as provided in sections [60-4,167] and [60-4,168], and shall be subject to prosecution for any violation of sections [60-6,196] and [60-6,197].
- An officer may require a PBT or a chemical test from a commercial vehicle driver with reasonable grounds to believe the driver has any alcoholic liquor in his or her body.
- An officer may require a PBT from a commercial vehicle driver with reasonable grounds to believe that (1) such person has any alcoholic liquor in his/her body, or (2) has committed a moving traffic violation, OR (3) has been involved in a traffic accident.
- Refusal of a PBT is a Class V Misdemeanor, and the driver shall be placed under arrest and be required to submit to a chemical test.
- If a commercial vehicle driver refuses a chemical test or has a BAC of .04 or above (blood or breath) the officer shall forward DMV a sworn report stating the same.
- If the person refuses a test and leaves the state for any reason following an accident, he or she shall remain subject to testing

and prosecution upon return.

BOATS AND BOATING SAFETY

THE SAFE BOAT ACT:

Section [37-1201 to 37-12,110] is the *State Boat Act*. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

*NOTE: The statutes listed are only a selected portion of the laws regarding boats and other watercraft most relevant to this handbook.

DEFINITIONS:

- ***Boat***, as the term is used in this handbook, refers to a motoboat, a personal watercraft, or other watercraft subject to the provisions in this section.
- ***Motorboat*** [37-1204] means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto.
- ***Personal watercraft*** [37-12.04.01] means a class of motorboat less than sixteen feet in length which uses an internal combustion engine powering a jet pump as its primary source of motive propulsion and is designed to be operated by a person sitting, standing, or kneeling on the watercraft rather than in the conventional manner of boat operation. Unless otherwise specified, a personal watercraft is subject to all applicable laws that govern *vessels*.
- ***Vessel*** [37-1203] means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

- ***Waters of This State*** [37-1206] means any waters within the territorial limits of Nebraska.

RECKLESS OR NEGLIGENT OPERATION PROHIBITED:

1. Elements: [37-1254]

It is unlawful for any person to:

- f. Operate any motorboat or vessel,
- b. Or manipulate any water skis, surfboard, or similar device,
- c. In a reckless or negligent manner so as to endanger the life, limb, or property of any person.

2. Classification: [37-1272]

Class II Misdemeanor

PERSONAL WATERCRAFT USE RESTRICTIONS:

1. Manner of Operation: [37-1241.04]

A person shall operate a personal watercraft on the waters of this state in a reasonable and prudent manner.

- A maneuver which unreasonably or unnecessarily endangers life, limb, or property is prohibited and includes weaving through congested vessel traffic, jumping the wake produced by another vessel at a distance of less than fifty yards, or jumping the wake produced by a motorboat or personal watercraft that is towing a person or persons.
- A person shall not operate a personal watercraft on the waters of this state unless he or she is facing forward on the watercraft.

2. Time Restrictions: [37-1241.03]

A person shall not operate a personal watercraft on the waters of this state during the period from sunset to sunrise.

3. Towing; When Permitted: [37-1241.05]

A person shall not operate a personal watercraft on the waters of this state to tow a person on water skis, kneeboards, inflatable crafts, or any other device unless the personal watercraft is designed to accommodate more than one person

and the personal watercraft is recommended by the manufacturer to tow such devices.

4. Exceptions: [37-1241.08]

Personal watercraft restrictions do not apply to participation in an authorized regatta, race, marine parade, tournament, or exhibition or to a person who is otherwise exempt from the State Boat Act.

5. Classifications:

The violations listed above are Class IV Misdemeanors.

AGE AND OTHER RESTRICTIONS FOR MOTORBOATS AND PERSONAL WATERCRAFT: [37-1241.06] to [37-1241.08]

- a. A person must be at least fourteen years of age to operate a motorboat or personal watercraft on the waters of this state.
- b. No person under sixteen years of age shall operate a motorboat or personal watercraft on the waters of this state with an individual in tow behind the motorboat or personal watercraft.
- c. Effective January 1, 2012, no person born after December 31, 1985, shall operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed an approved boating safety course and been issued a valid boating safety certificate.
- d. A boat livery may not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.
- e. These restrictions do not apply to participation in an authorized regatta, race, marine parade, tournament, or exhibition or to a person who is otherwise exempt from the State Boat Act.
- f. Violation of the restriction above is a Class V Misdemeanor, except a violation related to a boat livery rental is a Class IV.

MOTORBOATS TOWING A PERSON: [37-1260]

All motorboats having in tow or otherwise assisting a person on water skis, aquaplane, or similar contrivance, shall be operated in a

careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

MOTORBOAT NOISE RESTRICTIONS: [37-1253]

- No person shall operate or give permission for the operation of a motorboat on the waters of this state in such a manner as to exceed a noise level of ninety-six decibels when measured at one hundred feet or more on plane using the A-weighting network of a sound level meter complying with the standards set forth in S1.4-1983 (R 2001) of the American National Standards Institute, as those standards existed on August 31, 2003.
- The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner.
- The use of cutouts is prohibited except for motorboats competing in an approved regatta or boat race (including trials 48 hours before and after).

***BOATING UNDER INFLUENCE OF
ALCOHOL OR DRUGS***

****2011 Update****

1. Elements: [37-1254.01]

It is unlawful for any person to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state:

- a. While under the influence of alcoholic liquor or of any drug,
- b. Or with a concentration of alcohol in his/her blood or breath at or above the legal limit (.08).

2. Classification: [37-1254.12]

- a. Class II Misdemeanor for a first offense.
 - The offender shall be ordered not to operate any motorboat or personal watercraft under propulsion for six months from the date of conviction (sixty days if

- offender is placed on probation)
- b. Class I Misdemeanor if the offender has had one or more prior convictions.
- A person convicted of a second or subsequent offense shall be ordered not to be in the actual physical control of any motorboat or personal watercraft under propulsion for two years - even if probation is granted or the sentence suspended.

IMPLIED CONSENT FOR BOATS: [37-1254.02]

Any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

- An officer may require any person arrested for any offense arising out of acts alleged to have been committed while the person was boating under the influence of alcohol or drugs to submit to a chemical test when the officer has reasonable grounds to believe that the person was in violation of [37-1254.01].
- Any person who is required to submit to a chemical test shall be advised that if he or she refuses to submit to such test or tests, he or she could be charged with a separate crime.
- Failure to provide such advisement shall not affect the admissibility of the chemical test result but shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.
- The officer directs whether the test or tests shall be of blood, breath, or urine [37-1254.03].
- The person tested shall be permitted to have a physician of their choice evaluate his/her condition and perform or have whatever laboratory tests such person tested deems appropriate in addition

- to and following the test or tests directed by the peace officer.
- If the officer refuses to permit such additional tests to be taken, then the original tests shall not be competent as evidence.
- Upon request the results of the test or tests taken at the direction of the peace officer shall be made available to the person being

REFUSAL OF A CHEMICAL TEST:

1. Elements: [37-1254.02]

It is unlawful for any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state to:

- Refuse to provide a sample of his/her blood, breath, or urine
- After being directed by a peace officer to submit to a chemical test or tests of his or her blood or breath pursuant to this section.

2. Classification: [37-1254.12]

- The penalty for refusing the chemical test are the same as for boating under the influence, noted below.

*NOTE: A person arrested for refusal must be advised that refusal of the test means that he/she could be charged with a separate crime. Failure to give this advisement means that the person cannot be charged with refusal - see [37-1254.02].

PBT TESTING AND BOATS: [37-1254.09]

****2011***

Update*

- Any officer authorized to make arrests for boating under the influence may require the operator of a boat to submit to a preliminary breath test with *reasonable grounds* to believe that such person is under the influence of alcohol or of any drug.
- Any person who refuses to submit to such PBT or whose test results is above the legal limit shall be placed under arrest.
- Any person who refuses to submit to such preliminary breath

test shall be guilty of a Class III Misdemeanor.

BOATING DURING COURT-ORDERED

PROHIBITION: [37-1254.10]

It is a crime to operate a motorboat or personal watercraft during a period of court-ordered prohibition resulting from a conviction for boating under the influence or refusal of a chemical test as outlined in [37-1254.01] or [37-1254.02] or a similar city or village ordinance.

- Violation of this section is a Class I Misdemeanor.

FLEEING IN A VESSEL TO AVOID ARREST:

1. Elements: [28-905]

Any person who:

- a. Operates any motor vehicle,
- b. To flee in such vehicle or vessel (watercraft),
- c. In an effort to avoid arrest or citation,
- d. For the violation of any law constituting a misdemeanor, felony, infraction, or traffic infraction in Nebraska.

2. Classification:

- a. Class I Misdemeanor
 - Up to one-year revocation of operator's privilege.
- b. Class IV Felony and a two-year revocation of the offender's operating privilege if any of the following factors are present:
 - (1) The person fled to avoid arrest for a felony offense;
 - (2) The flight results in the death or injury of any person;
 - (3) The flight includes the willful reckless operation; or
 - (4) It is the second or subsequent violation.

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